

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

NO. 2:15-cv-01815-SD  
JURY TRIAL DEMANDED

JOSEPH and URSY	)	
A. VITALE	)	
	)	DEPOSITION UPON
	)	
	)	ORAL EXAMINATION
	)	
vs.	)	OF
	)	
ELECTROLUX HOME	)	WILLIAM J. VIGILANTE, JR.,
PRODUCTS, INC.	)	Ph.D., CPE

- - -

TRANSCRIPT OF ORAL DEPOSITION, taken by  
and before DONNA HUNTER, Registered Professional  
Reporter and Notary Public, at the Offices of deLUCA  
LEVINE, LLC, Three Valley Square, 512 E. Township  
Line Road, Suite 220, Blue Bell, PA, on Tuesday,  
April 26, 2016, commencing at 9:56 a.m.

ERSA Court Reporters  
30 South 17th Street  
United Plaza, Suite 1520  
Philadelphia, PA 19103  
(215) 564-1233

**WILLIAM J. VIGILANTE, JR., Ph.D., CPE**

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1 APPEARANCES:

2

3 deLUCA, LEVINE, LLC

4 By: PATRICK A. HUGHES, ESQUIRE

5 Three Valley Square

6 Suite 220

7 512 E. Township Line Road

8 Blue Bell, PA 19422

9 Counsel for Plaintiffs

10

11 NICOLSON LAW GROUP

12 BY: MELISSA YEMMA, ESQUIRE

13 Rose Tree Corporate II - Suite 6035

14 1400 North Providence Road

15 Media, PA 19063

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17 Counsel for Defendant,

18 Electrolux Home Products, Inc.

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2 (It was stipulated by and between

3 counsel that sealing, and certification be

4 waived; and that all objections, except as

5 to the form of the question, are reserved

6 until the time of trial.)

7

8 . . . WILLIAM J. VIGILANTE, JR.,

9 Ph.D., CPE, having been duly sworn, was

10 examined and testified as follows:

11 THE REPORTER: Usual stipulations?

12 MR. HUGHES: Except for reading and

13 signing.

14 BY MS. YEMMA:

15 Q. Good morning, Dr. Vigilante.

16 A. Good morning.

17 Q. We introduced ourselves before we got

18 started, but for the record, my name is Melissa

19 Yemma, and I'm with the Nicolson Law Group. And, I

20 represent the defendant, Electrolux Home Products,

21 in this lawsuit that's been brought by Allstate

22 Insurance Company, and Joseph and Ursy Vitale.

23 So, we're here today to take your

24 deposition. And, I understand you have given

3

1

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3 WITNESS:

4 WILLIAM J. VIGILANTE, JR., Ph.D., CPE

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6 By Ms. Yemma.....Page 4

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8 EXHIBITS

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1 depositions before today. Is that correct?

2 A. Yes, ma'am.

3 Q. Okay. And, I'm sure you've heard the

4 various rules that govern depositions. Do you need

5 me to repeat those for you today?

6 A. I don't believe so.

7 Q. Okay. I don't want you to be uncomfortable.

8 If you need to take a break, please let me know. We

9 can talk about a lunch break as we get further into

10 the deposition, but if you need water, coffee, tea,

11 let me know. Sound good?

12 A. Sure.

13 MS. YEMMA: All right. I'm going

14 to mark as Exhibit 1 the Notice of

15 Deposition.

16 (Document marked Exhibit Vigilante

17 No. 1 for identification.)

18 BY MS. YEMMA:

19 Q. Dr. Vigilante, I am going to hand that to

20 you. Dr. Vigilante, have you seen the document

21 that's been marked as Exhibit 1?

22 A. Yes, I have.

23 MR. HUGHES: Melissa, this is the

24 deposition notice that was sent to us

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<p style="text-align: right;">6</p> <p>1 yesterday?</p> <p>2 MS. YEMMA: Right. And, I was</p> <p>3 going to say that.</p> <p>4 BY MS. YEMMA:</p> <p>5 Q. So, there were some changes in the</p> <p>6 scheduling, and we served this deposition notice</p> <p>7 yesterday. But, you have seen this before today?</p> <p>8 A. Yes. I looked at it on my phone last night.</p> <p>9 Q. Okay. And, it's my understanding you did</p> <p>10 bring file material with you today?</p> <p>11 A. Yes. I brought all of my case material.</p> <p>12 Q. Okay. And, you have in front of you a black</p> <p>13 three-ring binder. Is that correct?</p> <p>14 A. That's correct.</p> <p>15 Q. Okay. And if you could identify for the</p> <p>16 record, generally, what's in that binder?</p> <p>17 A. There's nine tabs. I can go through the</p> <p>18 tabs real quick. Would that help?</p> <p>19 Q. That's great if you could do that.</p> <p>20 A. The first tab is two copies of my C.V., and</p> <p>21 two copies of my four-year testimony history.</p> <p>22 Tab two is a copy of my report in this</p> <p>23 matter.</p> <p>24 Tab three are my deposition summaries for</p>	<p style="text-align: right;">8</p> <p>1 that's sold both by Electrolux, and by</p> <p>2 do-it-yourself hardware stores. I believe they're</p> <p>3 from Lowe's, but it might be Home Depot. I don't</p> <p>4 remember which one, offhand.</p> <p>5 Another web description of flexible foil</p> <p>6 venting from Lowe's. And, then one from Amazon --</p> <p>7 I'm sorry, Sears, a Lambro dryer vent flexible foil</p> <p>8 transition duct from Sears.</p> <p>9 The next set of documents are from</p> <p>10 Electrolux. The first one is from their Electrolux</p> <p>11 store regarding -- I can go through why I picked</p> <p>12 them out, if you want, or I can just identify,</p> <p>13 however you want to do it.</p> <p>14 Q. You can identify why you picked them out.</p> <p>15 A. All right. The reason I picked this one out</p> <p>16 is Electrolux states on the website, and I printed</p> <p>17 in August 2013, that "Most people don't know that</p> <p>18 lint can build up around the heating element and</p> <p>19 cause a fire." They state, "If you're using a</p> <p>20 flexible dryer vent made of foil, or plastic, your</p> <p>21 dryer, family, and home may not be as safe as you</p> <p>22 think."</p> <p>23 The next one is from Electrolux website,</p> <p>24 again their Electrolux store, that I downloaded in</p>
<p style="text-align: right;">7</p> <p>1 Joseph Vitale, Ursy Vitale, and Mr. Carl King in</p> <p>2 this matter.</p> <p>3 Tab four are deposition summaries of other</p> <p>4 Electrolux employees from prior or different</p> <p>5 matters, including David Fuller from the Cloud</p> <p>6 matter, Steven Brown, I believe is from the Cloud</p> <p>7 matter, Carl King from the Cloud matter, Carl King</p> <p>8 from -- a couple different Carl King's. One's dated</p> <p>9 July 2nd, 2014. One's dated July 18th, 2013.</p> <p>10 Deposition of Brian Ripley in the Gargiulo matter;</p> <p>11 Brian Ripley from July 18th, 2013; Brian Ripley in</p> <p>12 the State Farm consolidated matter, I believe,</p> <p>13 July 1st, 2012. Mike Ricklefs from April 23rd,</p> <p>14 2014; Mike Ricklefs from the Gargiulo case; Stephen</p> <p>15 Joerger from February 11th, 2014. And, that's the</p> <p>16 State Farm versus Electrolux Home Products. Shelley</p> <p>17 Claussen from State Farm versus Electrolux Home</p> <p>18 Products.</p> <p>19 And then summaries the from Carl King's</p> <p>20 deposition in the Power matter. And, King's</p> <p>21 testimony, trial testimony in the Tirrell case.</p> <p>22 Tab five is a compilation of things.</p> <p>23 There's a couple different dividers. The first set</p> <p>24 are just different examples of flexible foil venting</p>	<p style="text-align: right;">9</p> <p>1 July, 2012. And it states, "Clean the inside of the</p> <p>2 dryer and around its heating element. Most people</p> <p>3 don't know that lint can build up around the heating</p> <p>4 element, and cause a fire."</p> <p>5 The next document is Electrolux Service</p> <p>6 Bulletin from November, 2000. On Page 19 it states,</p> <p>7 "Fortunately most people use the flexible tubing</p> <p>8 shown in diagrams D, E and F."</p> <p>9 So the reason I pulled those three as a</p> <p>10 handy, and put them in my notebook, was they deal</p> <p>11 with consumers' knowledge and practice with regard</p> <p>12 to dryers, and dryer vent systems.</p> <p>13 The next stack are, again, they're from</p> <p>14 different associations, and they deal with</p> <p>15 consumers' practices, and knowledge, with respect to</p> <p>16 dryers, dryer fires, dryer lint fires, and use of</p> <p>17 venting material.</p> <p>18 Q. Are we still on the tab five?</p> <p>19 A. Yes.</p> <p>20 Q. Okay.</p> <p>21 A. So the first one is from the National Fire</p> <p>22 Protection Association, and it has an updated</p> <p>23 publication date of July, 2013.</p> <p>24 The next one is an Underwriter Laboratories</p>

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<p style="text-align: right;">10</p> <p>1 Product Safety Tips. And, I don't have a date on 2 that one.</p> <p>3 The next one is a Consumer Product Safety 4 Commission Safety Alert, that is dated June, 2003.</p> <p>5 The next one is from an Ontario Fire 6 Marshal's office dated October 1st, 1996.</p> <p>7 The next one is in a newsletter titled 8 Topeak (ph) KM News dated August, 2003.</p> <p>9 The next is from, I believe, the University 10 of Florida dated -- I downloaded it on 12/21/2004.</p> <p>11 And then the vent -- we move to the next 12 batch of, again, documents from different 13 organizations related to consumers' knowledge, and 14 use of dryers, and cleaning, and venting, and so 15 forth.</p> <p>16 The first one is from NFPA. The second one 17 is a CPSC Safety Alert, and that's got a publication 18 date of June, 2003.</p> <p>19 The next one is from the Grand Valley Fire 20 Department. And, this one looks like I downloaded 21 it July, 2015.</p> <p>22 The next document is from the Wright 23 Patterson Air Force Base, dated September, 2001.</p> <p>24 The next two are from the website</p>	<p style="text-align: right;">12</p> <p>1 And then the second one is from the CPSC 2 titled Manufacturers Guide to Developing Consumer 3 Product Instructions dated October, 2003.</p> <p>4 And then the last tab are my two invoices 5 that I had sent to Mr. Hughes' office for my work in 6 this case.</p> <p>7 MS. YEMMA: Pat, can I get a copy 8 of tabs 3 through 8?</p> <p>9 MR. HUGHES: Sure.</p> <p>10 MS. YEMMA: Off the record. 11 (Discussion held off the record.)</p> <p>12 MS. YEMMA: Back on the record.</p> <p>13 BY MS. YEMMA:</p> <p>14 Q. Dr. Vigilante, we just went through what was 15 contained in the three-ring binder that you brought 16 with you today.</p> <p>17 A. Yes, ma'am.</p> <p>18 Q. And you also brought with you a flash drive; 19 is that correct?</p> <p>20 A. Two flash drives.</p> <p>21 Q. Two flash drives, okay. And, one is white 22 and one is black, for lack of a better way to 23 identify them.</p> <p>24 If you could just generally explain what's</p>
<p style="text-align: right;">11</p> <p>1 laundryalternative.com, and they're dated -- I 2 downloaded them December 21st, 2004 -- I take that 3 back. I didn't download them in 2004. They're 4 dated December 21st, 2004.</p> <p>5 The next one is from a company called 6 Allen's Chimney Sweep, and that has a date of 12/21, 7 2004. I don't think I downloaded it. I think 8 that's the publication date that seems to be on it.</p> <p>9 The next one is from a website called 10 Fixitnow, and that's dated October, 2003.</p> <p>11 Tab six is notes that I took several years 12 ago when calling appliance service professionals, 13 and dryer cleaning vent services in New Jersey, in 14 the Greater Philadelphia area, and up in New 15 Hampshire.</p> <p>16 Tab seven is the Dryer Owners Manual and 17 Installation Instructions that was produced in this 18 matter.</p> <p>19 Tab eight is the report of J.P. Purswell 20 with my notes on it.</p> <p>21 And then I provided two references after it, 22 one from the Handbook of Human Factors and 23 Ergonomics. Published in 1997, Chapter 36, Warnings 24 and Risk Perception.</p>	<p style="text-align: right;">13</p> <p>1 on the white flash drive, that you brought with you.</p> <p>2 A. Sure. There are nine folders, and then 3 several other documents. So, the first folder is 4 the deposition summaries, I think all of which were 5 printed in tabs 3 and 4.</p> <p>6 The second folder on the flash drive is 7 documents that were provided to me by Mr. Hughes' 8 office that were all discovery documents in this 9 matter.</p> <p>10 The next folder is called Dryer Literature, 11 and that's everything that was in tabs -- I think 12 it's tab 5, 6 -- tabs 5 and 6. Plus, there's 13 another sub folder in there called Exemplar -- 14 example indicator lights. And, these are manuals 15 from different appliances that have indicator lights 16 for service on the machine.</p> <p>17 The next folder is called Photos, and in 18 there are the photos from John Fry's inspections, 19 Mike Stoddard's photos, and the photos from the 20 Upper Dublin Fire Marshal's office.</p> <p>21 The next folder is entitled Randall Bills' 22 Photos, and that's all of Mr. Bills' photos that 23 were provided to me.</p> <p>24 The next folder is entitled References, and</p>

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<p style="text-align: right;">14</p> <p>1 in there are all the references I sited in the last  2 section of my report -- or the references section of  3 my report. I think the last section of my report is  4 the appendices.  5 The next folder called Reports, and it's got  6 my report, Mike Stoddard's report, John Fry's  7 report -- two John Fry's reports, I should say. And  8 then another folder called Defense Experts, and  9 that's got Mr. Purswell's report, Randy Bills'  10 report, and it has the Electrolux Rule 26 (a)(2)  11 Disclosure, and then it has the two book chapters  12 that I mentioned that are in tab eight.  13 The next folder is called Vitale underscore  14 WGI60294, and that has another copy of Mike  15 Stoddard's report.  16 Q. Is that from the Vitale matter?  17 A. Yes.  18 Q. Okay.  19 A. The next folder is called Warning, and it  20 has three JPEGs, that are essentially the warnings  21 that were in my report, Section E of my report.  22 And then the documents are my four-year  23 testimony list, CV, the initial case inquiry form  24 and engagement letter sent out from Robson Forensic</p>	<p style="text-align: right;">16</p> <p>1 version of that letter from Mr. Hughes, and that's  2 got a date of October 1st, 2015.  3 Q. So that letter, was that sent under your new  4 company of Vigilante Forensic?  5 A. Yes, ma'am.  6 Q. Okay.  7 A. And then the last document is the executed  8 deposition letter, that you had signed, with the  9 correction to the date, and the name of the case,  10 because it was originally for Cloud.  11 Q. Okay. Up-to-date because I sent it on  12 Friday, so...  13 A. Yes, yes. Thank you very much.  14 Q. Sure.  15 A. And, you're welcome to look. So, that's why  16 I brought the laptop.  17 Q. Thank you. And, I have my laptop in my car,  18 too.  19 So, I just have one question about the copy  20 of Dr. Purswell's report, we were discussing off the  21 record that the copy that's in your binder has some  22 notes on it.  23 A. Yes.  24 Q. And, Pat is looking into whether his</p>
<p style="text-align: right;">15</p> <p>1 when I was with Robson Forensic.  2 Q. And, again, I am going to ask you this  3 question later: What was the date of that letter?  4 Would that have been the initial -- when you were  5 initially retained?  6 A. Give me one second. The case inquiry form  7 has a date of July 8, 2015. The engagement letter  8 has a date of July 8th, 2015, but that's when  9 Robson's sent it. It's not signed. So, I'm not  10 sure when Mr. Hughes, or his office, returned it,  11 and officially engaged my services.  12 Q. But, you would have been contacted about  13 this matter before July 8th, 2015?  14 A. About this specific matter?  15 Q. Correct.  16 A. All I can say to you is the earliest that I  17 am sure of is July 8th, 2015. It's possible that  18 Mr. Hughes discussed the matter with me prior to  19 that date, but I don't have a memory of it.  20 Q. Okay. I didn't mean to interrupt.  21 A. That's okay. The next document is my  22 retention agreement, that I sent to Mr. Hughes, on  23 October 1st, 2015.  24 The next document is essentially the signed</p>	<p style="text-align: right;">17</p> <p>1 position is that I can have it, or not. So I just  2 wanted to know the copy that's on flash drive, does  3 that similarly have notes?  4 A. Yes.  5 Q. Okay. So, I just wanted to point that out.  6 Okay.  7 So then the black flash drive, what does  8 that contain?  9 A. This has the State Farm discovery documents.  10 So, there's hundreds of thousands of documents on  11 there -- hundreds of thousands of pages of  12 documents.  13 Q. And is that, as far as you know, a complete  14 set of the documents from the State Farm  15 consolidated matter, that you were provided by  16 counsel?  17 A. I can check real quick because I don't know  18 if it's complete. There are 22 folders labelled  19 Folder 1 through 22, and then a folder labelled  20 Supplemental Document Production.  21 Folder one has a bunch of documents, but the  22 first document in the list is entitled EHE  23 underscore SF0012699. So if I had to guess, there  24 are other documents that I don't have.</p>

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<p style="text-align: right;">18</p> <p>1 Q. Okay.</p> <p>2 A. And I can give you if you want the last</p> <p>3 Bates number on the last document.</p> <p>4 Q. That's okay.</p> <p>5 So, Dr. Vigilante, your entire file, you</p> <p>6 have the two flash drives, and then the three-ring</p> <p>7 binder, that we talked about earlier. Does that</p> <p>8 compromise your entire file for the Vitale matter?</p> <p>9 A. Yes.</p> <p>10 Q. And, does that include all the documents you</p> <p>11 are relying on in this matter to render your</p> <p>12 opinion?</p> <p>13 A. All those specific documents I'm relying</p> <p>14 upon, yes.</p> <p>15 Q. Okay. And, you made that clarification,</p> <p>16 "specific documents". Are there documents you are</p> <p>17 relying on generally, that aren't included?</p> <p>18 A. Well, truly, I've spent 20 years gaining</p> <p>19 knowledge from other documents that are part of my</p> <p>20 general background, education, and training, that I</p> <p>21 am relying on. But the specific documents for this</p> <p>22 case, I have produced them on the flash drive.</p> <p>23 Q. Thank you.</p> <p>24 (Document marked Vigilante Exhibit</p>	<p style="text-align: right;">20</p> <p>1 A. Yes. I haven't updated it since November</p> <p>2 1st, 2015. I don't think that there's anything that</p> <p>3 should be added.</p> <p>4 Q. And, you're currently employed; is that</p> <p>5 correct?</p> <p>6 A. Sure, yes.</p> <p>7 Q. And, where do you work?</p> <p>8 A. I work for Vigilante Forensic.</p> <p>9 Q. And, is that a company you started?</p> <p>10 A. Yes.</p> <p>11 Q. And, you started that in 2015?</p> <p>12 A. Yes.</p> <p>13 Q. What month did you start?</p> <p>14 A. The official -- the LLC was formed -- the</p> <p>15 LLC is Vigilante Consulting. That was formed in,</p> <p>16 maybe, August/September timeframe of 2015. The</p> <p>17 official start date for Vigilante Forensic was</p> <p>18 October 1st, 2015.</p> <p>19 Q. And prior to that, you were employed by --</p> <p>20 is it Robson Forensic?</p> <p>21 A. Robson Forensic.</p> <p>22 Q. Okay, thank you. And, you were employed</p> <p>23 there from 2003 to 2015. Is that correct?</p> <p>24 A. Yes, ma'am.</p>
<p style="text-align: right;">19</p> <p>1 No. 2 for identification.)</p> <p>2 BY MS. YEMMA:</p> <p>3 Q. I'm going to hand you what's been marked as</p> <p>4 Vigilante-2. And for the record, it is a 10-page</p> <p>5 document.</p> <p>6 Is this a document you have seen before</p> <p>7 today?</p> <p>8 A. It appears to be a copy of my C.V.</p> <p>9 Q. And, there's a date at the bottom of the</p> <p>10 document on the left-hand side, do you see that,</p> <p>11 November 1st, 2015?</p> <p>12 A. Yes.</p> <p>13 Q. What does that date represent?</p> <p>14 A. It's the date the document was created.</p> <p>15 Q. And --</p> <p>16 A. Well --</p> <p>17 Q. I'm sorry, go ahead. I didn't mean to cut</p> <p>18 you off.</p> <p>19 A. That's okay. That's the date the document</p> <p>20 was last updated.</p> <p>21 Q. Are there any updates, that should be added</p> <p>22 to this document, from July 1st, 2015?</p> <p>23 A. From November?</p> <p>24 Q. I'm sorry, November 1st, 2015.</p>	<p style="text-align: right;">21</p> <p>1 Q. In what month in 2015 did you cease</p> <p>2 employment with Robson?</p> <p>3 A. My last date would have been the last</p> <p>4 calendar day of September of 2015.</p> <p>5 Q. And, why did you leave Robson Forensic?</p> <p>6 A. To start my own company.</p> <p>7 Q. And, what does your company do?</p> <p>8 A. Vigilante Forensic provides both forensic</p> <p>9 consulting and traditional consulting work.</p> <p>10 Vigilante Forensic is the arm of Vigilante</p> <p>11 Consulting that handles strictly forensic matters.</p> <p>12 Q. And, do you currently have any employees?</p> <p>13 A. No.</p> <p>14 Q. So you were -- I think we established</p> <p>15 earlier that you were retained in July of 2015 for</p> <p>16 the Vitale matter. Is that correct?</p> <p>17 A. I don't know that that's correct.</p> <p>18 Q. Do you think it was prior to that?</p> <p>19 A. No. The easiest way to explain it is that</p> <p>20 the first known contact I had with Mr. Hughes</p> <p>21 regarding this matter was in July of 2015. At that</p> <p>22 time, I was employed by Robson Forensic. Robson</p> <p>23 Forensic sent Mr. Hughes an engagement letter. I do</p> <p>24 not have a copy of a signed engagement letter, so I</p>



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<p style="text-align: right;">22</p> <p>1 don't know if he ever retained me while I was 2 employed by Robson Forensic. 3 I do know that I was retained on October 4 1st, 2015 by Mr. Hughes under Vigilante Forensic. 5 Q. Okay. So apart from the signed engagement 6 letter, to the extent that it exists with Robson 7 Forensic, were there any other documents, that 8 you're aware of, that were generated while you were 9 at Robson related to this matter, that you do not 10 have? 11 A. Not that I'm aware of. 12 Q. And when you were with Robson, can you tell 13 me what type of work that you did over your time 14 there? 15 A. Sure. I had several positions, or 16 responsibilities, at Robson Forensic. From, I 17 guess, like, 2010 until the end of 2014, I was the 18 Area Manager for the Philadelphia area for Robson 19 Forensic. 20 From beginning of my employment with the 21 company, until I left the company, I was the 22 Practice Group Leader Manager for the Human Factors 23 Practice Group. 24 I also did my own casework at Robson the</p>	<p style="text-align: right;">24</p> <p>1 Q. And, did that change, or fluctuate? 2 A. Well, when I first started, it would have 3 been significantly lower. 4 Q. How about in 2014, the year before you left? 5 A. It was about 1,000. 6 Q. And before you left Robson, what was your 7 hourly billing rate that they charged for your work? 8 A. It was either -- well, I can tell you 9 specifically because it would have been in the 10 letter. Give me one second. 11 Q. Okay. 12 A. It looks like they were charging my time at 13 \$415 per hour. 14 Q. At now with Vigilante Forensic, what is your 15 hourly rate? 16 A. It is 335 an hour for all non 17 testimony-related work. 18 For deposition and trial testimony, it's 385 19 an hour. 20 And then for videotaped testimony, it's 21 another \$50, so I think it's 435. 22 Q. So while you were at Robson, if you could 23 give me a breakdown of how you spent your time in 24 terms of casework versus the consulting work. Are</p>
<p style="text-align: right;">23</p> <p>1 entire time I was employed there. 2 As part of my employment responsibilities, I 3 was also responsible for doing work for Robson 4 Forensic's sister company, or subsidiary, Fournier, 5 F-O-U-R-N-I-E-R, I believe, and that work was 6 traditional consulting work. So, nonforensic, or 7 non litigation-related. 8 Q. So any litigation-related work would have 9 been done under Robson Forensic? 10 A. Yes, ma'am. 11 Q. And, you had traditional casework from the 12 time you started in 2013 until you left in 2015? 13 A. I started in 2003, and I left in 2015. I 14 didn't have work that spanned the entire time. 15 There were projects that came in, and went. And, I 16 don't remember when the last consulting -- 17 nonforensic consulting job was. I believe it was in 18 the spring of 2015. 19 Q. So while you were at Robson Forensic -- and 20 this question also includes the sister company, the 21 subsidiary -- on average, how many hours were you 22 billing per year for litigation work? 23 A. For a number of years, I would say it was 24 around 1,000 hours a year.</p>	<p style="text-align: right;">25</p> <p>1 you able to do that? 2 A. Yes, the majority of my time -- I should say 3 the majority of my billable time, I think, is the 4 question you're asking me, the majority of it was 5 spent on forensic-related matters. 6 The nonforensic-related matters varied, you 7 know, from -- let's say a month's perspective -- 8 from zero percent to maybe 20 percent. 9 Q. Let's break it down between the forensic and 10 nonforensic. 11 So, the forensic work that you did, would 12 that all be litigation-related, or your being 13 retained by a plaintiff, or a defendant? 14 A. Or insurance company, or a federal or state 15 government, and then I think that's -- it would 16 either be criminal, civil, or insurance related. 17 Q. And, for the forensic work, can you break it 18 down between plaintiff and defendant, how much time 19 was spent doing work for a plaintiff versus 20 defendant? 21 A. Typically, it's been about 60/40 throughout 22 my years of doing this type of work, and it can 23 swing maybe five percent either way on a given 24 half-year basis.</p>

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<p style="text-align: right;">26</p> <p>1 Q. So, the forensic work, that would include</p> <p>2 writing expert reports, and testifying like you are</p> <p>3 doing in connection with this matter?</p> <p>4 A. Sure.</p> <p>5 Q. Okay. So the other part of your work, the</p> <p>6 nonforensic work, can you tell me what type of work</p> <p>7 you did that would be considered nonforensic?</p> <p>8 A. From a billable hour standpoint?</p> <p>9 Q. Well, let's take it from the billable hour,</p> <p>10 and then the nonbillable hour?</p> <p>11 A. Okay. The billable hour nonforensic work</p> <p>12 would be traditional consulting, and that was mostly</p> <p>13 related to manufacturers, property owners, and so</p> <p>14 forth, hiring me. Or, I'd be working through them</p> <p>15 hiring the firm consulting on warnings-related, or</p> <p>16 product safety-related issues.</p> <p>17 Q. Anything else?</p> <p>18 A. I may have done work with sound ordinance</p> <p>19 issues, neighbors putting in a racetrack, and are</p> <p>20 concerned about the sound. And you go out, and</p> <p>21 measure the sound, and then you may have to go and</p> <p>22 provide a report, or something, for a zoning</p> <p>23 hearing.</p> <p>24 Q. Okay. How about the nonbillable work, the</p>	<p style="text-align: right;">28</p> <p>1 2003, did they have a Philadelphia office?</p> <p>2 A. They did not.</p> <p>3 Q. So, you helped start that?</p> <p>4 A. Yes. They had -- the reason I hesitated was</p> <p>5 they had a -- the company has different areas, and</p> <p>6 they had a Philadelphia area, but they had no office</p> <p>7 in the area. So when I opened the office in the</p> <p>8 area, that was the first office in Philadelphia.</p> <p>9 They have an office in New Jersey, South Jersey,</p> <p>10 that for a while, I guess, I supervised the</p> <p>11 Philadelphia area, and then that responsibility got</p> <p>12 transferred to the manager in Lancaster.</p> <p>13 And then when I opened the office in</p> <p>14 Philadelphia, that became my responsibility. It's a</p> <p>15 little convoluted.</p> <p>16 Q. So before Robson, you were at ARCCA -- at</p> <p>17 least that's how I pronounce it?</p> <p>18 A. Yes. I worked for ARCCA prior to Robson</p> <p>19 Forensic.</p> <p>20 Q. What did you do at ARCCA?</p> <p>21 A. Essentially, forensic investigations for</p> <p>22 ARCCA, exclusively.</p> <p>23 Q. Is that when you first started working in</p> <p>24 litigation in cases?</p>
<p style="text-align: right;">27</p> <p>1 nonforensic, nonbillable work?</p> <p>2 A. So, that was about half my week, typical</p> <p>3 week, for the last, maybe, four, five years of my</p> <p>4 employment with Robson. So, I opened the</p> <p>5 Philadelphia office for the company, which would</p> <p>6 have required dealing with finding space, leasing</p> <p>7 space, fitting out space, hiring, interviewing,</p> <p>8 hiring employees, firing employees. So, personnel</p> <p>9 issues. Marketing, business development-related</p> <p>10 activities, mentoring activities. And, I have to</p> <p>11 decorate the office for the holidays.</p> <p>12 Q. Oh, okay.</p> <p>13 A. So, that was part of the area manager</p> <p>14 responsibilities.</p> <p>15 The practice group, I had responsibilities</p> <p>16 with the practice group. And that, again, involved</p> <p>17 interviewing and hiring human factors experts,</p> <p>18 mentoring, peer reviewing those experts, and then</p> <p>19 letting some of those experts go throughout the</p> <p>20 years.</p> <p>21 And then part of Practice Group Leader</p> <p>22 responsibilities is also marketing in business</p> <p>23 development.</p> <p>24 Q. When you started with Robson Forensic in</p>	<p style="text-align: right;">29</p> <p>1 A. No.</p> <p>2 Q. Okay. That would be before that?</p> <p>3 A. Yes.</p> <p>4 Q. Okay, we will get to that.</p> <p>5 So, before ARCCA, you were at --</p> <p>6 A. It's not on my CV.</p> <p>7 Q. It's not on your CV, okay.</p> <p>8 Then, can you tell me about that, when you</p> <p>9 first started in litigation?</p> <p>10 A. Yes. I can't say that I was in litigation,</p> <p>11 but my first doing forensic investigation started as</p> <p>12 a grad student working for my advisor, who was hired</p> <p>13 by attorneys to do forensic investigations. And, he</p> <p>14 would have the students do literature reviews,</p> <p>15 document reviews, analysis, and studies, and so</p> <p>16 forth. And, he would pay us \$20 an hour, which at</p> <p>17 that time I thought was a lot of money, and then I</p> <p>18 realized what he was billing, and he was</p> <p>19 shortchanging us.</p> <p>20 Q. So, was that when you were at North Carolina</p> <p>21 State University?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. During when you were pursuing your</p> <p>24 doctorate, or before that?</p>



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<p style="text-align: right;">30</p> <p>1 A. I would think most of that work was done  2 after the Master's was earned, and while I was  3 working towards the Ph.D., but I could be mistaken.  4 Q. So during that time -- so, say, between 1997  5 and 2001, did you give any depositions in connection  6 with a lawsuit?  7 A. No. I don't think that he disclosed that he  8 was having us do the work.  9 Q. Understood. Okay.  10 A. Maybe he did. I can't say that. We were  11 hired more as a technical staff, if you will.  12 Q. So then after you left North Carolina State  13 University, when was the next time that you were  14 providing consulting services in litigation?  15 A. I started with ARCCA as an independent  16 consultant in, I think, 2001, and then I worked for  17 them -- I worked for ARCCA on a part-time  18 independent consultant basis.  19 At the same time I worked for ARCCA, I was  20 also working for IBM as a full-time employee for  21 IBM, and basically ARCCA was moonlighting.  22 And then when I joined Robson Forensic in  23 the summer of 2003, I had to leave ARCCA due to case  24 conflicts, and so forth.</p>	<p style="text-align: right;">32</p> <p>1 monitors, scanners, tape drives. Like I said,  2 storage systems, tape libraries. I've done warnings  3 for software aps, web aps.  4 So, it kind of ranged amongst all different  5 types of products.  6 Q. So the products that you just described,  7 those were all while you were with IBM. Is that  8 correct?  9 A. Yes.  10 Q. Okay. And, were you working in a group when  11 you were developing the warnings, or were you  12 working on your own?  13 A. Typically, I was part of a Product  14 Development Team, and I was the User Experience Rep,  15 or the User Experience Design Team Lead.  16 Q. Did you say team leader?  17 A. Team leader/team lead, same thing.  18 Q. Okay. I just didn't hear you. I'm sorry.  19 So as the team lead, what would your role  20 be?  21 A. Well, typically, I was responsible for all  22 of the usability aspects related to the product  23 design. So, it can start from identifying the  24 requirements when we were launching new products, or</p>
<p style="text-align: right;">31</p> <p>1 Q. Dr. Vigilante, at any point in your career,  2 have you ever been hired by a product manufacturer  3 to draft a warning?  4 A. Yes.  5 Q. Okay. Can you give me an example of that  6 situation?  7 A. Sure. I worked for the IBM Corporation  8 doing design and development of consumer and  9 commercial-related products. And while at IBM, I  10 was responsible for designing the product warnings,  11 both manual warnings and on-product warnings.  12 Q. What specific type of products were you  13 designing warnings for when you were working at IBM?  14 A. They varied. I've done large commercial  15 storage base systems. These are a type of storage  16 base systems that, like, a Google would use, or a  17 large company like IBM, where they were  18 refrigerator-sized units that were hundreds in a  19 room, all the way down to little cards that -- the  20 warnings that went on little cards that went inside  21 your laptop to provide wireless connection prior to  22 them integrating it into the Intel chips that are  23 commonly used with laptops today. So, it varied.  24 I have done warnings for keyboards,</p>	<p style="text-align: right;">33</p> <p>1 launching a significant redesign of an existing  2 product, to creating formal requirements to start  3 with the designers to create requirements for the  4 actual design of the product, the interface design.  5 Creating mockups and prototypes, testing them with  6 various different usability techniques, working with  7 the information developers to craft the warnings in  8 the manuals, and reflections in the manuals, testing  9 that information through various usability testing  10 techniques, doing validation testing near the end of  11 the product development cycle, working with the  12 service group to identify where we're having issues  13 with products that were out in the field to identify  14 things that need to be addressed, and updates to  15 refresh it to the products.  16 I think that's probably a good general  17 description of my activities, and responsibilities.  18 Q. You referenced usability testing it. Can  19 you explain to me what that is, specifically? I  20 think I have an idea, but...  21 A. Yes. I bought a -- it's essentially to do  22 assessment testing of an interface warning  23 literature. There's different ways that you can do  24 it, depending upon your time, where you're at in the</p>

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<p style="text-align: right;">34</p> <p>1 development cycle, the money that's been set aside  2 for it, and whatever other constraints you may have.  3 So, they run from doing heuristic evaluations where  4 you're applying human factors principles, theories,  5 guidelines, and recommendations to the design to  6 looking at what's standards are applicable, and  7 applying those standards to the design to make sure  8 you meet minimum standards.  9 There's also, what we call, hallway testing,  10 which is essentially bringing in your coworkers, or  11 even, maybe, the maintenance staff, or folks from  12 the service call center, you know, who are readily  13 available, and typically somehow associated with the  14 company because you can grab them the hallway to  15 come in, and I've developed this warning, look at  16 it, tell me what it says. Or, I've developed this  17 interface, try to use it, and tell me what you  18 think. So, you can get feedback from other people  19 besides yourself.  20 There's focus groups where, typically, you  21 pay people to come in from the outside. Usually  22 they're representative of users, or the user  23 community. You sit around a table, a conference  24 table. There's typically a moderator. People are</p>	<p style="text-align: right;">36</p> <p>1 either require, or not require, a user, and that's  2 going through the steps that are necessary to  3 complete a task -- well, first, you want to identify  4 the important tasks that are of question; then,  5 identify the steps that are needed to complete those  6 tasks, identify the information, tools, and  7 knowledge that the user may need to complete each  8 step in the task, identify errors, mistakes, hazards  9 that can occur, or exist, during each step of the  10 task.  11 For bigger systems with employees, you can  12 look at job safety analysis, which are similar to  13 task analysis but you're doing it from the job  14 standpoint. So, there are different human factors  15 techniques that may, or may not, be relevant to a  16 product development site.  17 Q. So when you're developing a warning, how do  18 you decide which techniques you are going to use  19 because you're not doing all of these techniques  20 every time you're designing a warning; is that  21 right?  22 A. Sometimes.  23 Q. Sometimes?  24 A. Sure, sometimes, yes. Sometimes, again,</p>
<p style="text-align: right;">35</p> <p>1 shown different things. They may be ideas for  2 design. They may be the actual prototypes for the  3 design. They may be other products out there. And,  4 you gather requirements from the people, what do  5 they need, what problems are they experiencing in  6 whatever system they may be currently using, what  7 would they like to see in new designs, new products,  8 or new iterations of an existing design. So, you  9 gather input from the group as a whole.  10 Usability testing is typically done  11 one-on-one. So you have a user sitting in front of  12 whatever product, or warning, or literature, that  13 you are testing, or assessing, and it's one-to-one  14 interaction between the user, and the product.  15 Competitive benchmark is where you would  16 have users use your product, and then use a  17 competitor's product, and see how the two products  18 compare with respect to performance, ease of use,  19 understanding, et cetera.  20 Those are generally the accepted ways of  21 doing different types of human factors, or usability  22 assessment.  23 There's also, from more of a human factors  24 hardcore doing task analysis, which would not --</p>	<p style="text-align: right;">37</p> <p>1 it's going to be a question of the warning, the  2 constraints, what we know from field data, or  3 service data, service call data, prior incidences.  4 So I'll give you an example. One of the  5 products I worked on, and developed a warning for,  6 was the IBM IdeaScan. And we had put it out into  7 the market -- the team did before I got on the team.  8 So it was a product development team focused on the  9 IdeaScan scanner, you know, maybe seven, eight  10 people sat on the product development team  11 representing engineering, electrical mechanical  12 engineering testing, marketing, business  13 development, quality service, and so forth.  14 They put the scanner out with a warning, and  15 an instruction manual, and the instruction manual  16 also had a warning. And, basically, the warning  17 dealt with unlocking the scanner head before using  18 it.  19 Based upon the way the scanner was designed,  20 the scanner, if it moved during shipment, whether  21 being placed on the pallet, being placed on the  22 truck, moved from the truck to the store, the store  23 to the car, the car to home, you know, all the  24 movement of it, if it jiggled or jerked the scanner</p>

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<p style="text-align: right;">38</p> <p>1 head around, you'd break it. So, they would lock it  2 to the frame rails of the scanner. So you needed to  3 unlock it before you used it because if you tried to  4 use it without unlocking it, you would break the  5 scanner head. And then it would be no good, and  6 you'd get calls; people would return it, and so  7 forth.</p> <p>8 So service identified after -- you know,  9 they put the product into the marketplace -- a large  10 increase of people breaking the scanner head doing  11 exactly what the warning they had put out told them  12 not to do.</p> <p>13 So I got brought into the team to figure out  14 what's going on, how to fix the issue. And,  15 certainly, I looked at the warning, the on-product  16 warning, and the -- warning and instruction manual,  17 and identified that it was -- it didn't meet the  18 standards; it didn't meet the guidelines. It was a  19 bad warning. It was an inadequate warning. It  20 wasn't prepared the right way. It wasn't  21 attention-getting. It wasn't explicit and specific.  22 It wasn't placed in a place where it would be  23 readily seen by the user before they did whatever  24 they do.</p>	<p style="text-align: right;">40</p> <p>1 that goes on a desktop, just like a general sense?  2 A. It was a desktop scanner.  3 Q. Okay. And, do you know where the warning  4 was located on the scanner?  5 A. It was on the bottom.  6 Q. The bottom? So you would have to lift it up  7 to see it?  8 A. Yes. That was part of the problem.  9 Q. Okay. So then if you could explain to me --  10 I know you said once you became part of the team,  11 you made changes, and those were implemented.  12 Could you just, specifically, if you  13 remember, tell me what changes you made?  14 A. Sure. The first thing I did was I took a --  15 I don't know what the best word to describe it is --  16 but I took a warning, and I made it so that it  17 prevented you from opening the top of the scanner  18 lid until you removed the warning. So, it was a  19 piece of paper that kind of cuffed the scanner.  20 And, I made the label itself safety orange, and then  21 I put a warning on it -- meaning the ANSI Z535.4  22 requirements.  23 So, it had the signal word "warning" in  24 color with the text. I don't remember exactly what</p>
<p style="text-align: right;">39</p> <p>1 So it was quite clear from the service data  2 that the warning didn't have its intended effect.  3 It was clear looking at it, and doing heuristic  4 evaluation, that this is why we are getting service  5 calls, this is a bad warning.</p> <p>6 So I developed a new warning, and went  7 through the standards, and the guidelines, to  8 develop that warning. And, then integrated that  9 into the existing products that were being shipped  10 out. And we saw our return rates, and incident  11 rate, decline significantly. So, we knew that it  12 worked, and we verified that it worked based upon my  13 redesign of the warning.</p> <p>14 Q. So the IdeaScan scanner, before you got  15 involved in the project, did have it -- and I just  16 want make sure I understood your testimony  17 correctly -- it had an on-product warning, and then  18 there was the same warning in the owner's guide. Is  19 that fair?  20 A. I don't know if it was the same warning, but  21 the same topic was addressed in the owner's manual.  22 Q. Okay. So the IdeaScan scanner, how big of a  23 product are we talking about? Is it something that  24 would stand alone on the ground, or is it something</p>	<p style="text-align: right;">41</p> <p>1 the text said, but it had something to do with  2 warning, remove -- or unlock scanner, turn scanner  3 over, unlock it before starting. If you attempt to  4 start it, blah, blah, blah. So that was the  5 interactive warning I put on there.</p> <p>6 On the bottom, I took the warning that was  7 there, and again formatted it to the ANSI standard.  8 It was a white and black label, or something like  9 that -- so inconspicuous. Redundantly put it on the  10 bottom, and then in the manual did the same thing,  11 highlighted it in the manual. When they initially  12 had it in there, it wasn't highlighted. There was  13 nothing conspicuous about it. It didn't stand out  14 from the other information in the manual.</p> <p>15 Q. So, before your changes, do you know how  16 many pages the manual was?  17 A. I don't remember offhand, and I don't  18 remember -- IBM had at the time -- IBM liked to --  19 before I got on the teams I was involved with --  20 liked to produce multilingual manuals. So the  21 manual for English may have been anywhere from a  22 half dozen to a dozen pages. But the manual,  23 itself, may have been longer because they threw in  24 Spanish, French, Japanese, Chinese, you know,</p>

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<p style="text-align: right;">42</p> <p>1 wherever they're planning on selling it. So the</p> <p>2 manual, itself, may have been bigger, or thicker.</p> <p>3 Q. But in different languages?</p> <p>4 A. Different languages, yes.</p> <p>5 Q. So the warning, that you were involved with</p> <p>6 changing, do you know what page it was on in, at</p> <p>7 least, the English portion of the manual?</p> <p>8 A. I don't recall that well where it was</p> <p>9 initially.</p> <p>10 Q. Did you change the location in the manual?</p> <p>11 A. I don't recall if I had to change the</p> <p>12 location, or not, but I would have to assume one</p> <p>13 way, or the other, and I don't know if you want me</p> <p>14 to assume.</p> <p>15 Q. I don't want you to assume.</p> <p>16 When you said "highlight", what I thought of</p> <p>17 when you said that was, you know, highlights with</p> <p>18 color. But, maybe you meant something different.</p> <p>19 A. Well, again, using the signal word in the</p> <p>20 ANSI colors, make it larger, have a border around</p> <p>21 it, make it stand out from the other information on</p> <p>22 the page.</p> <p>23 Q. So after the changes had been implemented</p> <p>24 both to the label, that you had to interface before</p>	<p style="text-align: right;">44</p> <p>1 A. Both.</p> <p>2 Q. Both, okay. So, a target for bow and arrow</p> <p>3 shooting?</p> <p>4 A. Firearm shooting.</p> <p>5 Q. Oh, firearms. Got it, okay.</p> <p>6 So tell me about that project, and what did</p> <p>7 that involve? What was your initial assignment in</p> <p>8 that company?</p> <p>9 A. The company designed, and developed, a</p> <p>10 new-fangled target, if you will, that there were</p> <p>11 essentially disks, and when you hit it with a</p> <p>12 projectile, a bullet, it would puff out with what</p> <p>13 would look like smoke, and would give some feedback</p> <p>14 to the shooter that they were hitting the target,</p> <p>15 and it would be a little bit more exciting than</p> <p>16 shooting a static paper target.</p> <p>17 The disks went in paper targets, so they</p> <p>18 were, like, cutouts, and the paper target, you put</p> <p>19 the disk in there. I got contacted by the</p> <p>20 manufacturer -- I don't recall exactly how, but they</p> <p>21 were looking at what warnings they needed to put on</p> <p>22 the product, and then they wanted advice and</p> <p>23 guidance on how to format and present the warning on</p> <p>24 the product.</p>
<p style="text-align: right;">43</p> <p>1 using the scanner, and also to the manual, were</p> <p>2 those changes kept in effect?</p> <p>3 A. For that. Then, we changed that to the</p> <p>4 IdeaScan 2000, and we found a way to fix the problem</p> <p>5 so that the warnings weren't needed after that.</p> <p>6 So, again, from a product design standpoint,</p> <p>7 you want to eliminate problems, safeguard them, and</p> <p>8 then provide warnings. So, the focus was on getting</p> <p>9 rid of the problem.</p> <p>10 Q. So while you were at Robson Forensic, and</p> <p>11 also at the sister company, were you ever hired by a</p> <p>12 product manufacturer to draft a warning --</p> <p>13 A. Yes.</p> <p>14 Q. -- for consumer products?</p> <p>15 A. Consumer and commercial.</p> <p>16 Q. Okay. So, let's just stick with the</p> <p>17 consumer products.</p> <p>18 Can you give me an example of a product that</p> <p>19 you were hired by a manufacturer to create?</p> <p>20 A. The last one I did was a warning for a</p> <p>21 target, a reusable target for target shooting. I</p> <p>22 don't recall the name of it offhand.</p> <p>23 Q. The name of the product, or the name of the</p> <p>24 manufacturer?</p>	<p style="text-align: right;">45</p> <p>1 Q. And, what did you do for them in response to</p> <p>2 that assignment?</p> <p>3 A. Two things. Generally, one is I worked with</p> <p>4 them to identify the hazards associated with it.</p> <p>5 And that entailed working with their designer, and</p> <p>6 then working with their toxicologist because there</p> <p>7 was a -- because it was -- I don't know how to</p> <p>8 describe it. It's like a solid powdered substance</p> <p>9 that would, when struck, or touched, give off</p> <p>10 whatever any properties of the products were. So I</p> <p>11 wasn't sure if there was an inhalation, or a toxic</p> <p>12 issue with it. So, my first suggestion was to have</p> <p>13 a toxicologist look at the ingredients of the</p> <p>14 product, and make sure there was nothing toxic about</p> <p>15 it. And if there was, of course, we'd have to</p> <p>16 address it in a warning.</p> <p>17 And then we looked at the other -- like I</p> <p>18 said, from the design standpoint, what other hazards</p> <p>19 could be potentially associated with it.</p> <p>20 After we identified the hazards, I gave them</p> <p>21 advice on how to present the information on the</p> <p>22 product packaging, how to format it based upon the</p> <p>23 ANSI standard, where to place it on the product, and</p> <p>24 so forth.</p>

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<p style="text-align: right;">46</p> <p>1 Q. Okay. As far as you know, is that product 2 still in use today with the warning that you 3 designed? 4 A. As far as I know. I don't think I ever saw 5 the finished product, and I never saw the finished 6 warning. 7 Q. Have you ever been retained by a dryer 8 manufacturer to develop a warning? 9 A. Not that I'm aware of. 10 Q. Okay. Have you been retained by a dryer 11 manufacturer to review warnings? 12 A. Not that I'm aware of. 13 Q. Dr. Vigilante, when you are developing a 14 warning, how do you decide, generally, what goes on 15 the product versus what goes in the product 16 literature? 17 A. Yes. So, there's general guidelines how to 18 make a determination. So you want to look at: (1) 19 the severity of the hazard; (2) likelihood; (3) 20 exposure. And, that will give you the ability to 21 assess hazards by risk. So, certainly the higher 22 risks ones you want to make sure you're dealing 23 with. 24 And, then, the other variables you want to</p>	<p style="text-align: right;">48</p> <p>1 decided to do was put the NRA Safe Gun Handling 2 Requirements. So that was provided with the target. 3 So, number one, is to -- I don't know if I can 4 remember them in order. But one of the top three is 5 know what you're shooting at, and what's beyond it. 6 So, target placement. 7 Q. Okay. When you said "in instructions", 8 just to clarify, so with the reusable target, did it 9 have warnings on the product? 10 A. Well, it didn't have it on the product. It 11 came in a -- like a -- for lack of a better term -- 12 a plastic bag with a label, like, stapled to the top 13 of it. And, I think the -- there was -- I suggested 14 the warning for the toxicology issues be on the 15 label, and I think they agreed to put the top three 16 of the NRA Safe Gun Handling on the label. And the 17 rest of them were repeated, and expanded upon, in 18 the instruction manual insert that came with the 19 product. 20 Q. So the label that was on the plastic bag -- 21 just so I am understanding -- and, let's go back to 22 the plastic bag. Was that a covering that's meant 23 to be discarded once you start using the target? 24 A. Yes.</p>
<p style="text-align: right;">47</p> <p>1 look at are: (a) what are people's knowledge? Is 2 the information that you are providing consistent, 3 or not consistent, with people's expected knowledge? 4 And then you're looking at is the hazard something 5 that is, again, consistent, or unique, to your 6 particular design. 7 So the risk assessment, the expected 8 knowledge, and consistency, and other products are 9 your three big ones that you want to consider. 10 Q. Going back to the reusable target -- to use 11 that as an example -- what was the most severe 12 hazard associated with the target? 13 A. The most severe was the potential for the 14 user to set the target up in front of something that 15 could be damaged, or hurt, or killed. So, if they 16 improperly placed the target, and you shot at it, 17 and shot through it, and there was a playground in 18 the background, that would be considered the most 19 severe hazard. 20 Q. So, the placement of the target? 21 A. That was a big one. 22 Q. So, was there a warning associated with 23 where the target should be placed? 24 A. In the instructions, I think what they</p>	<p style="text-align: right;">49</p> <p>1 Q. Okay. So, was the warning affixed by a 2 sticker, or how was it attached to the plastic? 3 A. My understanding was that they were going to 4 have, like, a plastic vessel, and then you would 5 have a cardboard strip at the top, double-sided, 6 that you would staple over the plastic. So if 7 you -- I don't know how to explain it -- maybe if 8 you went and bought a kid's Halloween costume where 9 it's in a plastic bag, and they put the marketing 10 piece on the top of it, and staple on it. And, it's 11 got a little description that's a continuation of 12 the top stapled part that goes in front of it, that 13 you have to remove that cardboard to open the bag to 14 get the costume out. It's essentially the same 15 principles. It's a common way to package durable 16 one-time use goods. 17 Q. So once -- 18 A. Or, nondurable -- nondurable, yes. 19 Q. Nondurable, okay. 20 So, once the initial purchaser, they buy 21 this target, and then if they wanted to start using 22 it, they would have to remove the plastic vessel 23 that had the warning attached. Is that correct? 24 A. They would have to remove the target from</p>



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<p style="text-align: right;">50</p> <p>1 the package.</p> <p>2 Q. Okay. And, essentially, they could throw</p> <p>3 away the packaging. Correct?</p> <p>4 A. Yes. It was a one-time use product.</p> <p>5 Q. Okay. So, it's a one-time use. So, you use</p> <p>6 it one time, and then you're discarding the product?</p> <p>7 A. That's what it was meant to be. I mean,</p> <p>8 theoretically, you can shoot it once and then, you</p> <p>9 know, if it starts raining, and you decide you're</p> <p>10 done for the day, but then you would have to put it</p> <p>11 somewhere. Because, like I said, it's like a</p> <p>12 powdery substance. So if you handle it, it gets</p> <p>13 everywhere. So you wouldn't want to put it in your</p> <p>14 car because you would have whatever color it was</p> <p>15 staining everything.</p> <p>16 Q. Okay. Just to go back to my last question.</p> <p>17 So once the plastic vessel, we'll call it, was</p> <p>18 removed, though, there were no warnings on the</p> <p>19 actual product. Is that right?</p> <p>20 A. That's correct, you couldn't attach a label</p> <p>21 to it.</p> <p>22 Q. Okay.</p> <p>23 (Document marked Vigilante Exhibit</p> <p>24 No. 3 for identification.)</p>	<p style="text-align: right;">52</p> <p>1 Q. Dr. Vigilante, we have marked as Vigilante-4</p> <p>2 a document that you kindly provided to us this</p> <p>3 morning. And, could you identify for the record</p> <p>4 what that document is?</p> <p>5 A. That's my updated four-year testimony</p> <p>6 history.</p> <p>7 Q. Okay. And, in your career, how many</p> <p>8 depositions can you estimate that you've given?</p> <p>9 A. Over 100.</p> <p>10 Q. And, how many times have you testified in</p> <p>11 court over the course of your career?</p> <p>12 A. Like, 33 times.</p> <p>13 Q. When you testified in court, had you been</p> <p>14 qualified as an expert each of those 33 times, as</p> <p>15 far as you know?</p> <p>16 A. I would have been, yes.</p> <p>17 Q. Okay. And, in what discipline were you</p> <p>18 offered as an expert at trial, if you can recall?</p> <p>19 A. So, typically, I'm offered as a human</p> <p>20 factors expert, and then in this product warning</p> <p>21 case, I'll be offered as an expert in warnings,</p> <p>22 product warnings, product safety. I think it</p> <p>23 depends on the jurisdiction, and what the court</p> <p>24 requires.</p>
<p style="text-align: right;">51</p> <p>1 BY MS. YEMMA:</p> <p>2 Q. I am going to hand you what's just been</p> <p>3 marked as Vigilant-3. And that, I believe, is a</p> <p>4 copy of your testimony back in March of 2012. Is</p> <p>5 that right?</p> <p>6 A. That is, yes.</p> <p>7 Q. And as far as you know, is this a current</p> <p>8 copy of your testimony, both deposition and trial,</p> <p>9 from March, 2012 to the present?</p> <p>10 A. It is not.</p> <p>11 Q. It is not. Okay. So, what needs to be</p> <p>12 added to the document to make it current.</p> <p>13 A. Here you go. (Witness handing document to</p> <p>14 Ms. Yemma.)</p> <p>15 Q. Okay, thank you.</p> <p>16 MR. HUGHES: Do you want me to make</p> <p>17 copy of that?</p> <p>18 MS. YEMMA: Okay. And, let's just</p> <p>19 take a five-minute break, too.</p> <p>20 MR. HUGHES: Sure.</p> <p>21 (Brief recess.)</p> <p>22 (Document marked Vigilante Exhibit</p> <p>23 No. 4 for identification.)</p> <p>24 BY MS. YEMMA:</p>	<p style="text-align: right;">53</p> <p>1 Q. Okay. Have you been qualified in any case</p> <p>2 as an expert in product warnings?</p> <p>3 A. Yes.</p> <p>4 Q. Same question with regard to product safety,</p> <p>5 to the extent there's a difference?</p> <p>6 A. Oh, I'm sorry. Yes, I don't know -- I can't</p> <p>7 tell you what the exact words were.</p> <p>8 Q. Okay.</p> <p>9 A. You know, if my client offers me as a human</p> <p>10 factors expert in product safety, product warnings,</p> <p>11 I don't know the exact terminology he's using.</p> <p>12 Q. Have you ever been excluded by a court from</p> <p>13 testimony?</p> <p>14 A. Yes.</p> <p>15 Q. How many times?</p> <p>16 A. In two federal courts, two federal cases,</p> <p>17 and then a state court in Virginia.</p> <p>18 Q. Okay. The two federal cases, they wouldn't</p> <p>19 appear on your testimony history, correct, if you</p> <p>20 didn't testify in those cases?</p> <p>21 A. One was in 2004, so that's been a number of</p> <p>22 years ago. And, I don't recall if the second one,</p> <p>23 if that was more than four years ago. It might have</p> <p>24 been more than four years ago, as well.</p>



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<p style="text-align: right;">54</p> <p>1 Q. Okay. So, let's start with the first one in 2 2004. Where was that case venued, if you know? 3 A. It was either New York, or Connecticut. 4 Q. And, who were you retained by in that case? 5 A. I don't recall the firm's name. 6 Q. Was it by plaintiff? 7 A. On behalf of plaintiff, yes. 8 Q. On behalf of the plaintiff. And, it was a 9 products case? 10 A. Yes. 11 Q. What type of product was at issue? 12 A. It was a bicycle helmet sold by Costco. 13 Q. And, do you recall what the challenge was to 14 your testimony, as you sit here? 15 A. I don't recall the challenge. I recall the 16 Judge's ruling that the field of psychology was 17 nothing more than commonsense; therefore my opinion 18 wasn't beyond the province of the jury. And, as you 19 can imagine, I strongly disagree with that opinion. 20 Q. All right. And the other case, do you 21 remember what year that was, or -- 22 A. I'm thinking that that was more than four 23 years ago, but it was probably in the later 2000's, 24 early -- maybe 2010, 2011. It wasn't as old as</p>	<p style="text-align: right;">56</p> <p>1 Q. So, can you tell me just a little bit about 2 that case? 3 A. Yes. It was a pole vault mat used in high 4 schools, or colleges, or what have you, and they're 5 typically large sections of mat that are strapped 6 together, and then a thinner mat is placed over the 7 top of them to prevent people from going in cracks 8 when they fall into them when they pole vault. 9 Because they're used outside, the manufacturers 10 recommend that they lift them up onto a base, kind 11 of like a bed frame for your bed. And what happens 12 is, is that when there's a strong windstorm, wind 13 can get under it, and it acts like a sail. It'll 14 pick it up, and toss it. 15 And what we found in our investigation was 16 that this is happening all across the country, and 17 it's typically associated with big windstorms, 18 whether they're tornadoes, or other thunderstorm 19 events, strong thunderstorm events. 20 The particular incident, there was some kind 21 of athletic event at a high school where a crowd had 22 gathered to watch the event. They were in the 23 stands. And, the pole vault mat was left out on its 24 crates, and a windstorm came in suddenly. They</p>
<p style="text-align: right;">55</p> <p>1 2004. 2 Q. And, where was that case venued? 3 A. That was in Virginia. 4 Q. Federal Court? 5 A. Yes. 6 Q. And, were you retained on behalf of the 7 plaintiff? 8 A. Yes. 9 Q. And, was it a products case? 10 A. Yes. 11 Q. What type of product was at issue? 12 A. It was a pole vault mat. 13 Q. Okay. And, the court excluded your 14 testimony at trial? 15 A. It was a government motion, I believe, or I 16 don't know if it was a Motion in Limine, or what the 17 exact motion was. 18 Q. And as you sit here, do you recall what the 19 Judge's ruling was on that motion? 20 A. He ruled the hazard was an act of God, and 21 therefore unforeseeable to the defendants; 22 therefore, no warning was necessary. 23 Q. Was that it? Was there anything more? 24 A. I think that was the gist of it.</p>	<p style="text-align: right;">57</p> <p>1 called the match, and they suggested that people go 2 to their cars for safety. 3 As the spectators were walking through the 4 infield, I guess the wind came down, picked up the 5 pole vault mat, and knocked it into three people, 6 injuring them, one of them significantly. 7 So the question was, at least from my 8 standpoint was, was it necessary for the 9 manufacturer to provide a warning to either stake it 10 down, or make sure it's brought inside when not in 11 use, or when heavy winds are expected. 12 Q. In the bicycle helmet case, do you recall 13 what your opinion was, or what you looked at in that 14 case? 15 A. That one was a little different. It 16 involved -- essentially, the product packaging for 17 the helmet made a bunch of untrue claims regarding 18 the protection offered by the helmet. They claimed 19 it was the greatest thing since sliced bread for 20 safety, that it was used by NASCAR drivers, used by 21 Tour de France riders. And, what turns out, it was 22 a piece of garbage. I think the biomechanical 23 expert opined in the case you were better off 24 putting a Styrofoam cooler on your head, and riding</p>

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<p style="text-align: right;">58</p> <p>1 down the street.</p> <p>2 So, obviously, the marketing was not in sync</p> <p>3 with the quality of the product. And, I opined on</p> <p>4 the effect the marketing would have on a purchaser's</p> <p>5 belief as to the safety offered by the product.</p> <p>6 Q. And, you mentioned -- and, this is in the</p> <p>7 two federal court cases. Was there one state court</p> <p>8 case where your testimony was precluded?</p> <p>9 A. Yes.</p> <p>10 Q. And, what year was that state court case,</p> <p>11 that you were involved in?</p> <p>12 A. I don't recall the years. I'm really giving</p> <p>13 the best estimate as to the late 2000s.</p> <p>14 Q. And, where was that case venued, what state,</p> <p>15 if you recall?</p> <p>16 A. Virginia.</p> <p>17 Q. And, you were retained on behalf of the</p> <p>18 plaintiff in that case?</p> <p>19 A. Yes.</p> <p>20 Q. And, it was a products case?</p> <p>21 A. No.</p> <p>22 Q. What kind of case was it?</p> <p>23 A. It was a premises case. It was a</p> <p>24 trip-and-fall on the extended bed of a shopping cart</p>	<p style="text-align: right;">60</p> <p>1 that affect decision-making. We study physical</p> <p>2 abilities and limitations.</p> <p>3 From an applied standpoint, we work with</p> <p>4 engineers, architects, product designers, to design</p> <p>5 products to take into consideration these human</p> <p>6 factors associated with perception, cognition, and</p> <p>7 physical abilities and limitations.</p> <p>8 Our goals are to design products that are</p> <p>9 easy to use. They're comfortable to use for the</p> <p>10 user. And, most importantly, they're safe to use by</p> <p>11 the user.</p> <p>12 MR. HUGHES: Off the record for one</p> <p>13 second.</p> <p>14 (Discussion held off the record.)</p> <p>15 MS. YEMMA: Back on the record.</p> <p>16 BY MS. YEMMA:</p> <p>17 Q. Okay. If you could turn your attention to</p> <p>18 Vigilante-4.</p> <p>19 A. Okay.</p> <p>20 Q. And I didn't have a chance to review this</p> <p>21 updated list, but it's my understanding you have</p> <p>22 given testimony in three other Electrolux cases. Is</p> <p>23 that right?</p> <p>24 A. I believe so.</p>
<p style="text-align: right;">59</p> <p>1 at a Best Buy.</p> <p>2 Q. Okay. And, so the plaintiff was injured?</p> <p>3 A. They tripped on the -- he walked around the</p> <p>4 cart, didn't realize there was an extended base, and</p> <p>5 tripped on the base.</p> <p>6 Q. And, do you recall what the court's opinion</p> <p>7 was in that case with regard to the motion the</p> <p>8 exclude your testimony?</p> <p>9 A. Yes.</p> <p>10 Q. Can you tell me what that was?</p> <p>11 A. Sure.</p> <p>12 Q. Okay.</p> <p>13 A. The judge ruled that the State of Virginia</p> <p>14 didn't recognize the field of human factors. They</p> <p>15 wouldn't let me testify as an expert in human</p> <p>16 factors.</p> <p>17 Q. How do you define human factors?</p> <p>18 A. Human factors is a science that studies how</p> <p>19 people interact with, or use, all different types of</p> <p>20 product, machines, and systems. From a basic</p> <p>21 science perspective, we study people's perceptual</p> <p>22 abilities. That's how we see, hear, feel. How we</p> <p>23 gather information from our senses from the</p> <p>24 environment. We study decision-making, and things</p>	<p style="text-align: right;">61</p> <p>1 Q. The Members Select, the Loiotile case, that</p> <p>2 was in March of 2015. I'm on Page 4.</p> <p>3 A. Yes.</p> <p>4 Q. And, then in August, 2015 in the Swanson</p> <p>5 case?</p> <p>6 A. Yes.</p> <p>7 Q. And, there was an earlier one --</p> <p>8 A. It's on Exhibit 3.</p> <p>9 Q. Okay. So that was one in April of 2012 in</p> <p>10 the American Family Mutual case?</p> <p>11 A. The Power case, yes.</p> <p>12 Q. Right, the Power case. Okay.</p> <p>13 And, that's left off Vigilante-4 because you</p> <p>14 just gave the last four years of your testimony?</p> <p>15 A. Yes.</p> <p>16 Q. Got it.</p> <p>17 Dr. Vigilante, approximately how many dryer</p> <p>18 cases have you been retained in where Electrolux is</p> <p>19 a defendant, if you know?</p> <p>20 A. I have been retained in, altogether, I'm</p> <p>21 going to say over a dozen.</p> <p>22 Q. Of those dozen cases, how many are current,</p> <p>23 would you say?</p> <p>24 A. I don't know all of them that are current.</p>

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<p style="text-align: right;">62</p> <p>1 I just -- I know I've got, I think, four current  2 with -- I would say five, I know, are current; two  3 may be ongoing. I don't know if it's settled, or  4 not. So, I think that's probably about it. Maybe,  5 let's say, five current, and maybe two that may be  6 current.  7 Q. With the rest being closed, as far as you  8 know?  9 A. As far as I know -- oh, I take that back.  10 Maybe three may be current. I haven't spoken to one  11 of my clients -- the Loiotile matter, I don't know  12 if that's current, or not. I don't know if that  13 settled.  14 Q. So of the five current, and then the two or  15 three that you're unsure of, are those cases all  16 with Mr. Hughes' office, or are they with other  17 attorneys?  18 A. Other attorneys.  19 Q. And, are they in cases involving insurance  20 companies other than Allstate?  21 A. I would imagine so.  22 Q. Dr. Vigilante, have you ever sat on any  23 committees that create standards for household  24 appliances?</p>	<p style="text-align: right;">64</p> <p>1 you retained on behalf of the plaintiff?  2 A. Yes.  3 Q. And, was the defendant the same in those two  4 to three cases?  5 A. I don't know that.  6 Q. Do you know the name of any of the  7 defendants -- or the name of the dryer manufacturer?  8 A. In know one was either Whirlpool or Maytag.  9 And at that time, I don't recall if Whirlpool had  10 bought Maytag at that time. So, I don't know if  11 they were the same company, or not.  12 Q. Was that while you were with Robson?  13 A. Yes.  14 Q. Do you remember the year?  15 A. I'm going to say that one was closer to,  16 like, 2005, 2006.  17 Q. Do you recall what led to the lawsuit? Was  18 there an injury, or a fire?  19 A. I believe it was a fire.  20 Q. What was your role in that case involving  21 either Whirlpool, or Maytag? Do you recall?  22 A. It, most likely, related to warnings,  23 adequacy in warnings.  24 Q. Do you have a recollection, as you sit here,</p>
<p style="text-align: right;">63</p> <p>1 A. No.  2 Q. Have you ever been invited to sit on a  3 committee that creates standards for household  4 appliances?  5 A. No.  6 Q. Have you ever applied to be a member of a  7 committee that creates standards for household  8 appliances?  9 A. No.  10 Q. Sorry to jump around a little bit.  11 So just going back to your testimony  12 history, other than the cases involving Electrolux,  13 are any of the cases on your testimony list related  14 to cases involving clothes dryers?  15 A. I don't think there's anything else on the  16 testimony list that are related to clothes dryers.  17 Q. Okay. So, how about thinking about your  18 entire career. Have you provided consulting  19 services in litigation in a case involving a clothes  20 dryer not manufactured by Electrolux?  21 A. I believe so.  22 Q. Okay. How many times?  23 A. Maybe, two or three.  24 Q. Okay. And in those two to three cases, were</p>	<p style="text-align: right;">65</p> <p>1 what your role was?  2 A. I'm making that assumption because I don't  3 have a -- I don't have -- I don't have a memory of  4 being retained to deal with a particular design  5 issue other than product warnings.  6 Q. Okay. And, is that a case you gave  7 testimony in?  8 A. That did not go to trial.  9 Q. How about a deposition?  10 A. I'm thinking there was a deposition.  11 Q. And, do you recall where the case was  12 venued?  13 A. I do not.  14 Q. Do you remember if it was federal, or state,  15 court?  16 A. I do not.  17 Q. Do you recall any of the opinions you gave  18 in the case?  19 A. I do not.  20 Q. Do you recall if you were critical of the  21 product manufacturer's warning?  22 A. I don't recall what my opinions were in that  23 case, but I imagine if I was deposed, I probably had  24 opinions that were favorable to my client, which</p>

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<p style="text-align: right;">66</p> <p>1 would be adverse to the defendant.</p> <p>2 There may have been -- I don't know, but</p> <p>3 there may have been two, or more, defendants because</p> <p>4 there may have been a retailer installer. So the</p> <p>5 opinions may have been directed at them. I just</p> <p>6 don't recall.</p> <p>7 Q. Do you recall if whether the product, the</p> <p>8 dryer in the case, does it have on-product warnings</p> <p>9 in addition to warnings that were contained in paper</p> <p>10 form?</p> <p>11 A. I don't recall, but I would imagine so.</p> <p>12 Q. So in the other -- I know you said two to</p> <p>13 three cases where a dryer was involved -- you don't</p> <p>14 recall the names of the dryer manufacturers in those</p> <p>15 cases?</p> <p>16 A. No.</p> <p>17 (Document marked Vigilante Exhibit</p> <p>18 No. 5 for identification.)</p> <p>19 BY MS. YEMMA:</p> <p>20 Q. I am going to hand you what's just been</p> <p>21 marked as Vigilante-5.</p> <p>22 Dr. Vigilante, I just handed you what's been</p> <p>23 marked as Exhibit 5. Do you recognize that</p> <p>24 document?</p>	<p style="text-align: right;">68</p> <p>1 were defective in a manner which caused the fire; if</p> <p>2 Electrolux actions were unreasonable, and the cause</p> <p>3 of the fire; and if the Vitales actions were</p> <p>4 foreseeable to Electrolux.</p> <p>5 Q. And, were you just reading from, is that</p> <p>6 Page 2 of your report?</p> <p>7 A. Yes, ma'am.</p> <p>8 Q. Okay. Dr. Vigilante, does your report</p> <p>9 contain all of the opinions that you intend to offer</p> <p>10 in this case?</p> <p>11 A. As of the date I wrote my report, it did.</p> <p>12 Q. Okay. And as you sit here today, realizing</p> <p>13 this report was authored, and was issued, on</p> <p>14 February 29th, 2016, do you have additional opinions</p> <p>15 that you anticipate offering at trial?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. Could you tell me what those are?</p> <p>18 A. They are in response to the defense expert</p> <p>19 reports.</p> <p>20 Q. Which defense expert, specifically?</p> <p>21 A. I don't know who I'll be asked to provide</p> <p>22 rebuttal report to but, certainly, Mr. Purswell.</p> <p>23 And then I had some comments on Mr. Bills' report,</p> <p>24 as well. But, I don't know if I will be asked to</p>
<p style="text-align: right;">67</p> <p>1 A. It appears to be a copy of my report for</p> <p>2 this matter dated February 29th, 2016.</p> <p>3 Q. Okay. We established earlier in your</p> <p>4 deposition that you had a document that was dated</p> <p>5 back in July of 2015 from Robson with regard to this</p> <p>6 matter, and that was the earliest date that you have</p> <p>7 for this case. Is that correct?</p> <p>8 A. Yes.</p> <p>9 Q. While you were at Robson, did anyone assist</p> <p>10 you with this file, that you are aware of?</p> <p>11 A. Not that I'm aware of.</p> <p>12 Q. And while you have been at your own company,</p> <p>13 Vigilante Forensic, has anyone, other than yourself,</p> <p>14 worked on the file?</p> <p>15 A. On my behalf?</p> <p>16 Q. On your behalf. Like, have you hired</p> <p>17 anyone --</p> <p>18 A. Not that I'm aware of.</p> <p>19 Q. -- to assist you?</p> <p>20 A. No, I have not.</p> <p>21 Q. Okay. What were you retained to do in this</p> <p>22 case?</p> <p>23 A. The purpose of my investigation was to</p> <p>24 determine if the warnings provided with the dryer</p>	<p style="text-align: right;">69</p> <p>1 provide that testimony, or not.</p> <p>2 Q. Okay. So since we don't know what Counsel</p> <p>3 will ask you at trial, I would like to explore at</p> <p>4 least what your reactions, or rebuttal opinions, are</p> <p>5 in regard to those reports.</p> <p>6 A. Sure.</p> <p>7 Q. So, let's start with Dr. Purswell. You've</p> <p>8 had an opportunity to review his report in</p> <p>9 connection with this matter?</p> <p>10 A. Yes.</p> <p>11 Q. And, what opinions do you have in response</p> <p>12 to what he's offered?</p> <p>13 And if you need to look for something on</p> <p>14 your computer, you can.</p> <p>15 A. Yes. After reading Mr. Purswell's report,</p> <p>16 my opinion is that he's wrong, that his opinions are</p> <p>17 contrary to the state of the art of the science of</p> <p>18 warning recommendations, guidelines, and standards,</p> <p>19 and of human factors guidelines and recommendations.</p> <p>20 My opinions are that the references he cited</p> <p>21 related to warnings actually contradict his</p> <p>22 opinions, and it's my opinion that many of the</p> <p>23 things he stated in his report are factually</p> <p>24 incorrect and/or misleading.</p>

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<p style="text-align: right;">70</p> <p>1 Q. Anything else?</p> <p>2 A. I think that's generally it. I mean I have</p> <p>3 specific comments. I think he's got a list of 23 --</p> <p>4 a list of 21 different items.</p> <p>5 Q. Are you talking about the number of</p> <p>6 paragraphs in his --</p> <p>7 A. He's got 21 opinions.</p> <p>8 Q. Do you have a response to each one of those</p> <p>9 opinions?</p> <p>10 A. Most of them, yes.</p> <p>11 Q. Okay. I didn't bring a copy of Dr.</p> <p>12 Purswell's report. Do you have a copy accessible to</p> <p>13 you?</p> <p>14 A. Yes. I'm looking at it now.</p> <p>15 Q. Okay. And if you need to refer -- you know</p> <p>16 the rule, if you need to refer to anything, that's</p> <p>17 fine, during course of the deposition. Just let me</p> <p>18 know that you are referring to it, if you don't</p> <p>19 mind.</p> <p>20 A. Okay.</p> <p>21 Q. So let's go in reverse order. You said with</p> <p>22 regard to Dr. Purswell's opinions, you said that</p> <p>23 they are factually incorrect, and/or misleading.</p> <p>24 And, I'm paraphrasing. Those were from my notes.</p>	<p style="text-align: right;">72</p> <p>1 Electrolux's judgment as to what they're putting on</p> <p>2 the product, and how.</p> <p>3 Q. Anything else with regard to Opinion No. 1?</p> <p>4 A. No.</p> <p>5 Q. Okay. Opinion 2?</p> <p>6 A. Opinion 2, Mr. Purswell, basically says I</p> <p>7 ignore the fact that the homeowners could not recall</p> <p>8 any on-product labels, and neither attempted to</p> <p>9 acquire an owner's manual, or installation</p> <p>10 instructions.</p> <p>11 And I take issue with that because he never</p> <p>12 explains why the Vitales should have, or would have,</p> <p>13 attempted to acquire a manual. And, he never</p> <p>14 explains what the process would be for them to have</p> <p>15 done so. So, he made that opinion without providing</p> <p>16 any analysis.</p> <p>17 He also ignores the fact that the warning</p> <p>18 that Electrolux provided on the product was not</p> <p>19 conspicuous. And, that gets into Opinion No. 3,</p> <p>20 where he believes the warnings on the dryer are</p> <p>21 quite -- quote/unquote "quite conspicuous".</p> <p>22 And, of course, the warnings on the dryer</p> <p>23 are black text on a white label on a white</p> <p>24 appliance. The door labels on the inside door</p>
<p style="text-align: right;">71</p> <p>1 A. Yes.</p> <p>2 Q. Okay. Can you be more specific what you're</p> <p>3 talking about, or what your opinions are?</p> <p>4 A. Sure. I think it's probably easier just to</p> <p>5 go through each of his opinions that I have comments</p> <p>6 on.</p> <p>7 Q. Okay. I was going to do that, too. So,</p> <p>8 let's start there.</p> <p>9 A. Okay.</p> <p>10 Q. If you would just tell me what number you</p> <p>11 are referring to.</p> <p>12 A. Well, for example, on the first opinion, he</p> <p>13 states that, and I'll quote, "However, he does not</p> <p>14 explain why he believes his judgments -- his</p> <p>15 judgment should be substituted for that of the ANSI</p> <p>16 Committee which dressed the issues of which warnings</p> <p>17 for gas dryers should appear first in the manual."</p> <p>18 And what I found misleading about that is</p> <p>19 that Electrolux designees testified that they used</p> <p>20 both the UL standard, and ANSI standard, to</p> <p>21 determine what information to provide, and that they</p> <p>22 actually provide information that's not required by</p> <p>23 either standard.</p> <p>24 So it's really not my judgment; it's</p>	<p style="text-align: right;">73</p> <p>1 frame, that can't be seen unless the door is open.</p> <p>2 And it's my understanding Electrolux puts it on the</p> <p>3 right side of the door frame, which is the hinge</p> <p>4 side of the door frame. And, certainly, that would</p> <p>5 make it even more difficult for a user to notice it.</p> <p>6 The warning on the back was also printed in</p> <p>7 white on black, or black on white, and would not be</p> <p>8 seen unless the dryer is pulled out from the wall</p> <p>9 because, of course, most of the time the user uses</p> <p>10 it, it's going to be not pulled out from the wall.</p> <p>11 And, I think Mrs. Vitale said she never pulled the</p> <p>12 dryer from the wall; therefore, she would never have</p> <p>13 the opportunity to see said warning.</p> <p>14 Q. Anything else with regard to 2 or 3?</p> <p>15 A. I think that covers it.</p> <p>16 Q. Okay. How about Opinion 4?</p> <p>17 A. In Opinion 4, he makes the statement that</p> <p>18 somehow or another -- he states that the</p> <p>19 requirements of ANSI Z535.4 conflict with those</p> <p>20 contained in ANSI Z21.5.1; therefore, the</p> <p>21 requirements of ANSI Z535.4 would not apply.</p> <p>22 However, there is absolutely no evidence, or</p> <p>23 support, to suggest that ANSI Z535.4 conflicts with</p> <p>24 ANSI Z521.5.1. He's provided no evidence to</p>

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<p>1 substantiate that claim and, in fact, there is none.</p> <p>2 Q. Anything else with regard to 4?</p> <p>3 A. No.</p> <p>4 Q. Okay.</p> <p>5 A. Also -- yes, there is. I'm sorry.</p> <p>6 I believe Brian Ripley, who was responsible</p> <p>7 for the design of the warning that went on the</p> <p>8 dryer, testified that he could have provided any</p> <p>9 format he wanted for it.</p> <p>10 Number 5, he states that I attempt to impose</p> <p>11 an obligation on Electrolux to ensure its consumers</p> <p>12 comply with Electrolux's warnings for the gas dryer.</p> <p>13 This attempt to impose the duty did not only provide</p> <p>14 appropriate hazard warnings for its products, but to</p> <p>15 also ensure that purchasers of its products</p> <p>16 adequately comply that the warning is unrealistic</p> <p>17 and impractical.</p> <p>18 He made that entire assertion up. Nowhere</p> <p>19 in my report, or my testimony in this case, or other</p> <p>20 cases, do I say that Electrolux has to ensure its</p> <p>21 consumers comply with the warnings for the dryer.</p> <p>22 Q. Anything else with regard to 5?</p> <p>23 A. Well, my opinions are that they have to</p> <p>24 provide adequate warning to motivate people to</p>	<p>1 the company was aware, that if a secondhand user</p> <p>2 didn't get a manual, they would not be aware of the</p> <p>3 necessity to clean the dryer.</p> <p>4 And then unrelated to Electrolux's failure</p> <p>5 to provide the warning on the product is J.P.</p> <p>6 Purswell's use of the approximate sign in a sense.</p> <p>7 And, we're going to discuss this a little</p> <p>8 bit later, but approximately 12 months is not a very</p> <p>9 good warning, particularly in light of the testimony</p> <p>10 that a fire could occur, even if you planned on</p> <p>11 cleaning it every 12 months, before the 12-month</p> <p>12 period.</p> <p>13 Q. Okay. So, anything more with regard to 6?</p> <p>14 A. No.</p> <p>15 Q. Okay. So, Opinion No. 7.</p> <p>16 A. No. 7, he says that the information in the</p> <p>17 manuals were each concise, and clearly written, and</p> <p>18 that the Flesch Kinkaid reading level of 8.9 of the</p> <p>19 owner's manual and installation instructions, and</p> <p>20 the statements, and the on-product labels, had a</p> <p>21 reading level of 10. He stated the language and</p> <p>22 grammar used in instructions and warnings were</p> <p>23 written to be understood by persons without a high</p> <p>24 school diploma.</p>
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<p>1 comply. And if they don't get people complying with</p> <p>2 the warning, they need to figure out what's wrong,</p> <p>3 and do something different so that people do comply.</p> <p>4 Q. Okay. Number 6?</p> <p>5 A. Number 6, he says the warnings on the dryer,</p> <p>6 and in the manual, comply with applicable standards.</p> <p>7 He does not list what standards it complied with,</p> <p>8 but it failed Z535.4, and it failed UL2158. And</p> <p>9 according to Mr. Ripley, they utilized UL2158 in a</p> <p>10 design of both their electric and gas dryers.</p> <p>11 And, maybe Mr. Purswell is not aware of that</p> <p>12 testimony.</p> <p>13 Q. Anything else with regard to 6?</p> <p>14 A. He says at the end of the paragraph, the</p> <p>15 maintenance interval to control the hazard</p> <p>16 approximately 12 months is also stated in the</p> <p>17 owner's manual, and the installation instructions.</p> <p>18 And my point is, is that it doesn't do the</p> <p>19 Vitales a lot of good because they were never given</p> <p>20 the manual.</p> <p>21 And, Carl King, as corporate designee,</p> <p>22 testified that Electrolux was aware that many users</p> <p>23 buy the product secondhand, and many of those users</p> <p>24 do not get a manual with it. And he was aware, and</p>	<p>1 Here, again, Purswell is misstating facts,</p> <p>2 and he's inconsistent with the guidelines for the</p> <p>3 design of warnings for product safety information,</p> <p>4 which states that is you're going to use a reading</p> <p>5 level assessment, like Flesch Kinkaid, that you want</p> <p>6 to make sure the text is at a fourth to sixth grade</p> <p>7 reading level, not a ninth or tenth grade reading</p> <p>8 level.</p> <p>9 And it should also be noted that the</p> <p>10 military uses a sixth grade reading level for the</p> <p>11 instruction of their manuals.</p> <p>12 Q. Dr. Vigilante, what is the basis for your</p> <p>13 opinion that it should be between a fourth and a</p> <p>14 sixth grade level?</p> <p>15 A. They're the two references that I provided</p> <p>16 in tab number 8.</p> <p>17 Q. That's the Handbook of Human Factors and</p> <p>18 Ergonomics?</p> <p>19 A. That's one.</p> <p>20 Q. And, then Manufacturer's Guide Developing</p> <p>21 Consumer Products Instructions?</p> <p>22 A. That's two. They're others. They were the</p> <p>23 two I brought specifically.</p> <p>24 Q. Okay. Any other comments with regard to</p>



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<p style="text-align: right;">78</p> <p>1 Opinion 7?</p> <p>2 A. The other the comment is that the gentleman</p> <p>3 who wrote the first article -- you have to turn to</p> <p>4 page 3, that's the book chapter.</p> <p>5 Q. Page 3 of the book chapter?</p> <p>6 A. Title page is Chapter. Laugherty and</p> <p>7 Wogalter are two of the editors of one of the books</p> <p>8 he sites as his reference. Handbook of Warnings was</p> <p>9 edited by Michael Wogalter. So the guy who edited</p> <p>10 the book he's referencing states in his book chapter</p> <p>11 that the appropriate reading level is on the fourth</p> <p>12 to sixth-grade level. I just wanted to point that</p> <p>13 out.</p> <p>14 Q. Did you work with Mr. Wogalter at North</p> <p>15 Carolina State?</p> <p>16 A. Yes.</p> <p>17 Q. How did you work together? Were you in same</p> <p>18 group, or --</p> <p>19 A. He was my major advisor.</p> <p>20 Q. Was that during when you got your Master's</p> <p>21 or Ph.D., or both?</p> <p>22 A. Both.</p> <p>23 Q. Anything else with regard to Opinion 7 that</p> <p>24 we haven't already discussed?</p>	<p style="text-align: right;">80</p> <p>1 the hazard, or the need to have a dryer taken apart,</p> <p>2 and cleaned, to avoid the hazard.</p> <p>3 Third, he fails to note that Electrolux</p> <p>4 allows the subject install, that is the dryer to be</p> <p>5 installed with flexible foil venting.</p> <p>6 Fourth, he fails to recognize the irony, I</p> <p>7 guess, that the incident GE dryer was installed with</p> <p>8 GE branded, and UL approved, venting.</p> <p>9 So, he does not address that in his report,</p> <p>10 or his opinions. And, I find it inconceivable that</p> <p>11 he doesn't even bother to address that fact.</p> <p>12 Q. Anything else with regard to 8?</p> <p>13 A. I think that generally covers it.</p> <p>14 Q. Opinion 9?</p> <p>15 A. No. 9, he says that he has reviewed a video</p> <p>16 depicting the partial disassembly and cleaning of</p> <p>17 the dryer prepared by Carl King. He says the</p> <p>18 process is pretty forward, and can be performed by a</p> <p>19 competent appliance repair person, and that there's</p> <p>20 no special procedure required for cleaning lint in</p> <p>21 the dryer cabinet.</p> <p>22 And it should also be noted the lint</p> <p>23 cleaning process does not require the complete</p> <p>24 disassembly of the dryer.</p>
<p style="text-align: right;">79</p> <p>1 A. I think that's generally it.</p> <p>2 Q. Okay. How about Opinion 8?</p> <p>3 A. In 8, he states that the warnings safety</p> <p>4 related precautions were placed near -- and I stress</p> <p>5 the word near -- beginning of the documents, and</p> <p>6 were adequate to instruct persons installing and</p> <p>7 maintaining the dryer.</p> <p>8 And, I have a couple comments about that.</p> <p>9 The first is, is that according to Carl King, the</p> <p>10 lint fire hazards associated with lint buildup, lack</p> <p>11 of maintenance, and blockage of the vent, is the</p> <p>12 greatest, most likely hazard associated with the</p> <p>13 product. But, yet, the information related to it</p> <p>14 are not placed at the beginning of the document.</p> <p>15 They're placed "near" the beginning.</p> <p>16 And as I explain in my report, the</p> <p>17 information is buried in the manual.</p> <p>18 The second comment I want to make is he</p> <p>19 provides no analysis for his opinion.</p> <p>20 And then, third, he fails to recognize that</p> <p>21 Electrolux's own employees did not understand the</p> <p>22 warning.</p> <p>23 So, we have Shelley Claussen, David Fuller,</p> <p>24 and Steve Joerger, not understanding and recognizing</p>	<p style="text-align: right;">81</p> <p>1 So, a couple points: Number one is that I</p> <p>2 don't believe that the disassembly process would be</p> <p>3 difficult for a trained appliance repair person who</p> <p>4 knows what they're doing. The problem, of course,</p> <p>5 is he fails to recognize that Electrolux doesn't</p> <p>6 tell the trained authorized servicer what to do in</p> <p>7 the cleaning, or that the drum needs to be removed</p> <p>8 during the cleaning. It's not an issue of them</p> <p>9 being able to do it; it's a question that they don't</p> <p>10 know it because Electrolux didn't bother to tell</p> <p>11 them.</p> <p>12 The second point is that yes, there is</p> <p>13 special procedure required for cleaning lint from</p> <p>14 the dryer cabinet. And, it includes removing the</p> <p>15 drum.</p> <p>16 As I note in my call to many different lint</p> <p>17 service providers, the lint cleaning providers, they</p> <p>18 think that running a vacuum down the lint trap is</p> <p>19 sufficient to clean it. So, obviously, there is a</p> <p>20 specific special procedure for cleaning the dryer</p> <p>21 cabinet.</p> <p>22 Third, they said it does not require</p> <p>23 disassembly of the dryer. And, again, this is</p> <p>24 misleading in the fact that I'm not sure what he</p>

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<p style="text-align: right;">82</p> <p>1 would consider complete disassembly of the dryer if</p> <p>2 he doesn't consider removing the drum from the dryer</p> <p>3 as complete disassembly of the dryer. So, I would</p> <p>4 consider having -- or the need to remove the drum as</p> <p>5 being a complete disassembly of the dryer.</p> <p>6 Q. Have you reviewed the video of Carl's</p> <p>7 disassembly of the dryer, the one that he's</p> <p>8 referring to?</p> <p>9 A. I have not. I don't know that I have ever</p> <p>10 been provided with that.</p> <p>11 MS. YEMMA: Off the record.</p> <p>12 (Discussion held off the record.)</p> <p>13 MS. YEMMA: Back on.</p> <p>14 BY MS. YEMMA:</p> <p>15 Q. Okay. Anything else with regard to 9?</p> <p>16 A. No, but I do have a comment on No. 8 I</p> <p>17 forgot.</p> <p>18 Q. That's okay.</p> <p>19 A. On conclusion 8, he cites footnotes 2, 3, 4</p> <p>20 and 5, which are books related to warnings.</p> <p>21 The first two are selections from Human</p> <p>22 Factors and Ergonomics Society Meetings. So those</p> <p>23 two volumes consist of many different and separate</p> <p>24 papers. But, he doesn't say which of the particular</p>	<p style="text-align: right;">84</p> <p>1 Volume 1.</p> <p>2 Q. Okay.</p> <p>3 A. And then 22, and I believe that's in Volume</p> <p>4 2.</p> <p>5 Q. And just so we're clear, for the record, you</p> <p>6 are referring to the references on Page 40 of your</p> <p>7 report?</p> <p>8 A. Section G, pages 40 and 41 of my report.</p> <p>9 Q. All right. Did you have anything additional</p> <p>10 with regard to 8?</p> <p>11 A. Well, no.</p> <p>12 The other thing I wanted to point out is</p> <p>13 that from the Handbook of Warnings, which is</p> <p>14 footnote number 5, Chapters 1, 7, 8, 9 and 10</p> <p>15 provide information that's contrary to his opinions.</p> <p>16 Q. How so?</p> <p>17 A. Well, if we go into Chapter 1, which is</p> <p>18 Scope by Michael Wogalter, he talks about the</p> <p>19 Requirements of Warnings, The Guidelines for Product</p> <p>20 Warning Design, and they include important critical</p> <p>21 safety information on the product. It needs to be</p> <p>22 explicit and specific, and the person must be able</p> <p>23 to avoid the hazard when they comply with the</p> <p>24 warning.</p>
<p style="text-align: right;">83</p> <p>1 papers, and/or chapters applies. So he's just kind</p> <p>2 of giving a general book, and not telling us what in</p> <p>3 it is applicable.</p> <p>4 The fourth and fifth footnote, I note are</p> <p>5 published in 2005 and 2006 after the manufacture</p> <p>6 date of the dryer, and therefore didn't apply to the</p> <p>7 design and manufacture of the incident dryer. So</p> <p>8 I'm not sure why he is using them.</p> <p>9 And then I note that two papers that I cited</p> <p>10 in my report, that conflict directly with his</p> <p>11 opinions, are in the first two -- one of the first</p> <p>12 two footnotes, footnotes 2 or 3. I just wanted to</p> <p>13 point that out.</p> <p>14 Q. Okay. So, can you say that again. I'm</p> <p>15 sorry. So, footnote 2 and 3 --</p> <p>16 A. Footnotes 2 and 3 are a compilation of</p> <p>17 warnings proceedings papers, proceedings papers that</p> <p>18 deal with warnings and safety. And, two of the</p> <p>19 papers that I cite in my report that conflict those</p> <p>20 opinions are in those two volumes.</p> <p>21 Q. In what two reference are you referring to?</p> <p>22 And, you can refer to it by number, if</p> <p>23 that's easier.</p> <p>24 A. No problem. No. 18, and I believe that's in</p>	<p style="text-align: right;">85</p> <p>1 And, these things are all not met by the</p> <p>2 warnings Electrolux provides.</p> <p>3 Chapter 7 is the book chapter I wrote with</p> <p>4 Mike Wogalter, and in there I provide information</p> <p>5 and research related to what makes a warning</p> <p>6 conspicuous.</p> <p>7 And I can assure you that had the product</p> <p>8 been manufactured 2006 or '07, I would have cited my</p> <p>9 own chapter as to why this manual's warning</p> <p>10 information on the product in the manual is not</p> <p>11 conspicuous.</p> <p>12 Chapter 8 deals with comprehension, and I</p> <p>13 don't recall who the author of that is offhand. But</p> <p>14 that chapter, again, gives information on the</p> <p>15 necessity to providing explicit and specific</p> <p>16 information, and it also provides information that</p> <p>17 states that the text should be at the sixth grade</p> <p>18 level, not the eighth, ninth, or tenth grade level.</p> <p>19 So, again, inconsistent with his opinions.</p> <p>20 Chapter 9, I believe is Attitudes and</p> <p>21 Beliefs. And this gets into, again, the effect of</p> <p>22 familiarity and experience on people's likelihood to</p> <p>23 look for and read product warnings, and circles back</p> <p>24 to the importance of ensuring that adequate,</p>

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<p style="text-align: right;">86</p> <p>1 conspicuous, and properly located warnings are 2 provided to overcome those hurdles. 3 Chapter 10, I believe, is Motivation. And 4 amongst the different topics of Motivation is Cost 5 of Compliance, which Purswell does not address, and 6 Electrolux does not address. And that one of the 7 things I wanted to show by calling different 8 appliance shops, and dryer vent services, is to get 9 a cost. So, these dryers cost anywhere from 400 10 bucks to \$800 depending upon -- and, that's the 11 majority of them -- there are some higher and lower. 12 But these things, to get them cleaned every 12 13 months, is going to cost the user up to \$300 a year. 14 That's a huge bar to cost of compliance, and it's a 15 reason why you want to fix it from a design 16 standpoint rather than, you know, using warnings. 17 So, again, it's obviously information that 18 Purswell is not taking into account that's directly 19 applicable to our warnings, and our case. 20 Q. Okay. 21 A. And, that's just what I remember offhand. 22 Q. Okay. So, you were responding to both 23 Opinions 8 and 9? 24 A. Well, Opinion No. 8 provides the footnotes</p>	<p style="text-align: right;">88</p> <p>1 the world of warnings, that he seems to ignore. 2 And, three, my opinion is that they would 3 have avoided the fire. I don't know what else he 4 wants me to say. So, I just kind of question what 5 he is trying to get to, and what he's trying to -- 6 why he is not understanding the opinion. 7 So, I think that's generally it. 8 MR. HUGHES: Do you want to take a 9 break right there, and we can look at the 10 menu and order lunch? 11 MS. YEMMA: Sure. 12 (Brief recess.) 13 MS. YEMMA: Okay. We're back on 14 the record. 15 BY MS. YEMMA: 16 Q. Before we took a short break, we were just 17 about to turn to Opinion 11 from Dr. Purswell. 18 So, do you have any rebuttal to his Opinion 19 No. 11? 20 A. Yes. I have to make a clarification on when 21 we were talking about the footnotes 2, 3, 4, 5, I 22 was referencing Chapters 1, 7, 8, 9 and 10. I was 23 actually thinking about the textbook Warnings and 24 Risk Communication published in 1999, which was the</p>
<p style="text-align: right;">87</p> <p>1 to those four references. 2 Q. Anything else with regard to the footnotes 3 associated with Opinion 8? 4 A. I think that's generally it. 5 Q. Okay. How about Opinion 10? 6 A. Sure. Opinion 10, I note that I question 7 whether or not the testimony of the homeowners mean 8 anything to him. So he said I don't cite any peer 9 review literature that my proposed adequate warning 10 system would eventually cause them to take actions 11 which would have prevented the fire. 12 Ursy Vitale testified that had a warning, 13 consistent with what I offer, and on the dryer, she 14 would have heeded it. 15 Second, the literature in the standards of 16 sight are based upon research that shows these are 17 the factors that ensure, or make, a product 18 effective in getting people to comply with the 19 warning. 20 And, then he takes exception to the way I 21 had my finding worded. And my opinion is that had 22 Electrolux provided adequate information, they would 23 have (a), provided Joseph and Ursy Vitale with 24 informed content, which is an important concept in</p>	<p style="text-align: right;">89</p> <p>1 precursor to the Handbook of Warnings published in 2 2006. So, the same topics are covered in those 3 chapters. I had the wrong book. 4 So I just wanted to make that clear. 5 Q. Okay. So it wasn't the Handbook of 6 Warnings? 7 A. The Handbook of Warnings would have been a 8 different chapter. So, Chapter 1 was Scope. And 9 Handbook of Warnings, Chapter 1, in Warnings and 10 Risk Communication Handbook is called Introduction. 11 Chapter 7 in the Warnings and Risk 12 Communication with Attention Switch and Maintenance 13 by Wogalter and Leonard, Chapter 18 in Handbook of 14 Warnings is my Attention Switch and Maintenance. 15 And then Chapter 8 is Comprehension and 16 Understanding in the Warnings and Risk Communication 17 book, not the Handbook of Warnings. That is, I 18 think, Chapter 19, but I'm not sure, offhand. 19 The other two chapters are also covered in 20 the Handbook of Warnings, but they're different 21 chapter numbers. They would be later, later 22 chapters. It was after Chapter 11. 23 Q. Okay. Thanks for clarifying. 24 A. Sorry about that.</p>

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<p style="text-align: right;">90</p> <p>1 Q. No, that's okay. If you need to go back, 2 and clarify any earlier testimony, please do so. 3 Okay? 4 A. Okay. 5 Q. All right. So turning to Opinion 11, any 6 rebuttal to that opinion? 7 A. Yes. He's criticizing Mr. Stoddard for the 8 use of the cycle counter because he said that dryer 9 lint accumulation may vary by types of clothing 10 dried, as well as by venting between dryer drum and 11 the place where the dryer is exhausted outside. 12 And, he says Mr. Stoddard does not clarify how he 13 would handle these variations. 14 So his assertion is that if you use the 15 cycle counter, it may not be effective, and it may 16 be unreliable because a fire could occur before the 17 cycle counter gets to the end where it stops, and 18 shuts the dryer off. 19 And, probably, Mr. Purswell does not 20 understand that Mr. Stoddard's proposed cycle 21 counter was based upon Electrolux's determination of 22 when the cleaning should be done on average. And 23 that that is a problem, again, with a design of the 24 dryer in that had a person read, understood, and</p>	<p style="text-align: right;">92</p> <p>1 airflow monitors, and that Electrolux uses an 2 airflow monitor on some of their higher-end dryers. 3 So, I don't know if this is self-imposed 4 ignorance, or it's just ignorance totally on his 5 part. 6 No. 13, my general comment is that he's 7 moving the onus to providing adequate warning to the 8 user, the dryer users, on Allstate, and blaming 9 Allstate for failing to provide adequate information 10 to their insureds. 11 This is absurd. Electrolux had no right, 12 whatsoever, to rely upon Allstate, or any insurance 13 company, to ensure adequate warning is provided to 14 the users of their product. 15 No. 14, he states that there is no study to 16 differentiate amongst dryer buyers, and nothing 17 support my statement, or citation, that the CPSC 18 staff claims they believe the survey respondents are 19 more safety conscious than the population as a 20 whole, and therefore the claim is unverifiable, and 21 unverifiable -- I'm not sure why he puts that twice. 22 But that's, again, ridiculous. 23 It's the CPSC's statements that I cited. 24 So, he's taking umbrage, I guess, or taking offense</p>
<p style="text-align: right;">91</p> <p>1 intended to comply with the 12-month cleaning 2 recommendation Electrolux provides, they may still 3 have a fire because of things that Mr. Purswell 4 cites in his report, amongst other things. 5 That's the problem, or a problem, with the 6 warnings, is that the 12 months in this case, 18 7 months in the other Electrolux manuals, you can 8 intend to follow it, and still have a fire. That's 9 why it's not adequate. 10 So I think it's just kind of -- I don't know 11 what the right word is. It's just crazy that he 12 would fault Mr. Stoddard for the same problem that 13 Electrolux has with their warning. 14 Opinion 12, Mr. Purswell cites the consumer 15 reports evaluation of airflow monitors and dryers, 16 and uses this to suggest that Mr. Stoddard's design 17 change would not be effective. 18 And, I just don't know where -- (a) I didn't 19 realize that Mr. Purswell was an expert in airflow 20 monitors, or even in product engineering, or 21 electrical engineering, mechanical engineering, to 22 have an opinion on this topic. 23 Two, Mr. Purswell fails to recognize that 24 other manufacturers have used, and implemented</p>	<p style="text-align: right;">93</p> <p>1 the CPSC, the folks that did the studies on claim. 2 Number two, if he looked at it honestly, the 3 way they got their data was by people going to the 4 Consumer Product Safety Commission website, which is 5 a website dedicated to consumer product safety, 6 which would mean that these people are interested in 7 consumer product safety, and therefore more likely 8 be more safety conscious than the general 9 population. 10 But what really kills me is that it doesn't 11 make a difference because the people in the study, 12 their behavior was contrary to the recommendations 13 of Electrolux anyway, and were consistent with the 14 Vitales' behavior, and with the behavior of most of 15 the fire investigations that Carl King has 16 investigated, that is, they're not cleaning the 17 interior of their dryers, and they're using flexible 18 foil venting. So, what difference does it make 19 whether they're more safety conscious, or not. The 20 fact of the matter is that the majority of users are 21 doing the same thing the Vitales did, and they're 22 doing it because Electrolux is failing to provide 23 adequate warning. 24 Q. Anything else on 14?</p>

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<p style="text-align: right;">94</p> <p>1 A. That covers it.</p> <p>2 Q. Okay. Opinion 15, any rebuttal to that?</p> <p>3 A. Yes. It's a misstatement of my opinion.</p> <p>4 He's inferring that somehow or another, I'm stating</p> <p>5 that all maintenance instructions require safe</p> <p>6 operation of the product be directly on the product.</p> <p>7 And I never stated that, and never opined.</p> <p>8 So I don't know why he's giving a misstatement</p> <p>9 opinion.</p> <p>10 But, certainly, it is my opinion, that they</p> <p>11 should have had a warning on the product that says</p> <p>12 it needed to be cleaned every 12 months.</p> <p>13 No. 16 says that the UL215 standard</p> <p>14 applicable to gas dryers specified in the</p> <p>15 information about the need for periodic cleaning of</p> <p>16 the appliance by a qualified technician be contained</p> <p>17 in the instruction manual. It does not indicate it</p> <p>18 be included in the on-product label.</p> <p>19 And, my only rebuttal to that is to see</p> <p>20 section 7.1.113, which is contrary to his statement</p> <p>21 and opinion.</p> <p>22 Q. Anything else with regard to 16?</p> <p>23 A. I think that covers it.</p> <p>24 Q. 17, any rebuttal?</p>	<p style="text-align: right;">96</p> <p>1 of being human. Human memory is limited. That's</p> <p>2 why the warning needs to be on the product in and of</p> <p>3 itself, conspicuous on the top, or in front, of the</p> <p>4 product. Because if a user reads the manual for the</p> <p>5 dryer, there's no chance in the world they're going</p> <p>6 to memorize 10 pages of instructions and warnings.</p> <p>7 I don't understand how he doesn't recognize what</p> <p>8 he's saying. He recognizes the inability of people</p> <p>9 to remember lots of information, but then is saying</p> <p>10 that the greatest number one hazard associated with</p> <p>11 the protect is okay putting in the manual that</p> <p>12 people can't read and remember, as opposed to being</p> <p>13 on the product by itself, or is conspicuous,</p> <p>14 explicit, and specific.</p> <p>15 In his own opinion, he's conflicting</p> <p>16 himself.</p> <p>17 Q. Anything else on 17?</p> <p>18 A. The other thing I note is that, again, the</p> <p>19 warnings in the manual for the greatest most likely</p> <p>20 hazard should have been conspicuous, therefore it</p> <p>21 attracts people's attention. And, the way</p> <p>22 Electrolux buried this information is not</p> <p>23 conspicuous.</p> <p>24 So, again, if you're worried about people's</p>
<p style="text-align: right;">95</p> <p>1 A. He's stating that the warning literature is</p> <p>2 clear, that the recall of any particular on-product</p> <p>3 warning decreases but the number of warnings</p> <p>4 increases, as well as the length of each individual</p> <p>5 warning. Thus, Electrolux's decision to refer users</p> <p>6 of its dryer to the owner's manual and installation</p> <p>7 instructions rather than include the information and</p> <p>8 on-product label for some of its maintenance</p> <p>9 procedures was reasonable and appropriate.</p> <p>10 At this point, I am really banging my head</p> <p>11 at the table reading his report. Number one, the</p> <p>12 safety literature, the human factors literature, and</p> <p>13 the warnings literature, says that you want to</p> <p>14 design out the hazard, and provide safeguards, and</p> <p>15 not rely upon warnings.</p> <p>16 So if you have an excessive number of</p> <p>17 warnings that need to be on the product, it's a sign</p> <p>18 of a defective design. So if they had fixed their</p> <p>19 design, provided adequate safeguarding, there</p> <p>20 wouldn't be a need for the warning.</p> <p>21 Number two, he's right. The more</p> <p>22 information you provide, the less likelihood someone</p> <p>23 is going to be able to remember it all. People are</p> <p>24 stuck with memory limitations. It's a consequence</p>	<p style="text-align: right;">97</p> <p>1 ability to remember and recall all of the</p> <p>2 information they're reading in this multipage</p> <p>3 manual, you'd think they would want to make sure</p> <p>4 that the most important critical information for the</p> <p>5 greatest number one hazard is conspicuously</p> <p>6 presented, is the most prominently presented</p> <p>7 information in the manual, which it is not.</p> <p>8 I think that covers it for 17.</p> <p>9 Q. Any rebuttal to 18?</p> <p>10 A. Yes. He's trying to state that the warning</p> <p>11 meets the ANSI Z535.4 standard, and it doesn't, both</p> <p>12 on the product, and the manual. ANSI Z535.4</p> <p>13 requires color safety orange to make the warning</p> <p>14 information conspicuous, to highlight it from the</p> <p>15 other information to draw attention to it.</p> <p>16 The warning on the product is white. It's a</p> <p>17 white label with black text on a white appliance.</p> <p>18 That's not conspicuous.</p> <p>19 ANSI Z535.4 says the information should be</p> <p>20 placed -- should be visible where and when the</p> <p>21 information is needed.</p> <p>22 Again, that means on the product. For the</p> <p>23 install of the vent, it means on the back of the</p> <p>24 product near the vent. For the maintenance, it</p>



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<p style="text-align: right;">98</p> <p>1 means on the top, or in front of the product, not in  2 the manual. In the manual, it's not visible where  3 and when the information is needed. So, it's  4 contrary to the standard.</p> <p>5 And number 3, the standard says you need to  6 specify the hazard. And, there's nothing on the  7 product that specifies the hazard. There's nothing  8 in the manual.</p> <p>9 Related to the cleaning, that specifies if  10 you don't clean it, lint will build up behind and  11 near the heat source, and cause a fire. Nor does  12 the manual tell you that the greatest, most likely  13 cause of a fire is related to lint buildup, and not  14 cleaning.</p> <p>15 So, example on Page 8 of the manual, it  16 states to have a qualified technician vacuum the  17 lint from the dryer once a year.</p> <p>18 And then two, the exhaust duct, inspect and  19 clean the exhaust ducting at least once a year to  20 prevent clogging. If partially clogged, exhaust can  21 lengthen the drying time. The hazard of fire is not  22 identified anywhere in that section.</p> <p>23 Number two, it's not true that a qualified  24 technician vacuums the lint from the dryer once a</p>	<p style="text-align: right;">100</p> <p>1 precautions stated that GE's owner's manual and  2 installation instructions to have the interior of  3 the dryer cleaned by a qualified service personnel  4 every 12 months is not adequate to prevent  5 accumulation of lint in sufficient quantity within  6 the dryer cabinet to cause a fire.</p> <p>7 Brian Ripley testified that following the  8 warning may not prevent a fire. So, apparently,  9 Mr. Purswell is not aware of Mr. Ripley's testimony.  10 And in my report, I rely directly on Mr. Ripley's  11 testimony.</p> <p>12 Q. Anything else on 19?  13 A. That covers it.</p> <p>14 Q. Okay. And how about Opinion No. 20, any  15 rebuttal to that?  16 A. Yes. So he says that he disagrees that  17 Electrolux should define a qualified service  18 personnel on the label, or in the user's guide.</p> <p>19 Again, Mr. Purswell, who is ignoring the  20 testimony of Electrolux's own people, who feel that  21 they were qualified to clean their own dryers, even  22 though they didn't possess the knowledge, skills,  23 and questionable abilities to do it.</p> <p>24 Q. Anything else on 20?</p>
<p style="text-align: right;">99</p> <p>1 year. It should say that the qualified technician  2 to take the dryer apart, remove the drum, and remove  3 lint from behind the drum near the heat source where  4 it can build up, and cause a fire once a year. That  5 would be explicit and specific consistent with ANSI  6 Z535.4.</p> <p>7 On Page 4 -- I think this is the only other  8 location they provide with respect to cleaning the  9 interior of the dryer. Again, it is not specific to  10 the hazard that lint's going to build up near the  11 heat source, cause a fire. It's not explicit in  12 what needs to be done, the fact that the dryer needs  13 to be open, and the drum removed, and the lint  14 removed from around the heat source, and behind the  15 dryer. Again, inconsistent with ANSI Z535.4.</p> <p>16 And, I go through how and why it doesn't  17 meet the standard in my report.</p> <p>18 Q. We'll get to that later in the deposition.  19 A. Sure.</p> <p>20 Q. Okay. Any other rebuttal to Opinion 18?  21 A. I think that does it, for the most part.</p> <p>22 Q. Okay. And Opinion No. 19, any rebuttal?  23 A. Contrary -- he says contrary to the  24 suggestion of myself, there's no evidence to</p>	<p style="text-align: right;">101</p> <p>1 A. I think that's it.  2 Q. Okay. And I think 21, that's last opinion?  3 A. 21 is the last opinion. In this, he  4 questions Mr. Stoddard's engineering, and I just  5 question his expertise and ability to discuss dryer  6 design, and the reliability of cycle counters and  7 airflow monitors.</p> <p>8 And I also question his competency in human  9 factors in warnings because his opinions are  10 contrary to the science. They're contrary to the  11 citations he cited. They're contrary to the basic  12 safety hierarchy. They're contrary to basic human  13 factors principles with regard to indicator lights.  14 And, he disregards the basic research regarding  15 on-product warnings, manual explicitness,  16 motivation, familiarity, and all the other topics  17 that are related.</p> <p>18 Q. Okay. Earlier you stated that you also had  19 rebuttal opinions to --  20 A. I wasn't done.</p> <p>21 Q. Oh, I'm so sorry. I thought you paused.  22 A. Those are opinions. He gives -- in the  23 second half of his report, he gives a description of  24 the owner's manual, and I make a couple notes in</p>



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<p style="text-align: right;">102</p> <p>1 that.</p> <p>2 In the first paragraph, it says the first</p> <p>3 page of the manual -- or, excuse me, the second page</p> <p>4 of the manual contains the warnings mandated by ANSI</p> <p>5 Z21.5, and that's a half truth. The top part of it</p> <p>6 has the gas warning, but the second part of it has</p> <p>7 the California Safe Drinking Water Act Requirement.</p> <p>8 That's not required by ANSI Z21.5. So his statement</p> <p>9 is simply not true.</p> <p>10 And the third thing I want to point out is</p> <p>11 that the information from the ANSI warning, and the</p> <p>12 California warning, only take up about half a page.</p> <p>13 There's a whole half the page that's blank that</p> <p>14 could have been utilized to put the warning</p> <p>15 regarding the greatest, most likely, fire hazard</p> <p>16 associated with their product.</p> <p>17 Q. Anything else in rebuttal to Dr. Purswell's</p> <p>18 report, that we haven't discussed?</p> <p>19 A. Yes. The last half of that paragraph --</p> <p>20 Q. Can you tell me what page you're on?</p> <p>21 A. I'm sorry, it's page 7 of his report.</p> <p>22 Q. Okay, thanks.</p> <p>23 A. The first paragraph under Owner's Manual and</p> <p>24 Installation Instructions, he notes that on Page 3,</p>	<p style="text-align: right;">104</p> <p>1 cleaning, it's not formatted like a warning.</p> <p>2 There's no indication that fire is a consequence of</p> <p>3 not doing it. There's no signal word to alert</p> <p>4 people that it's safety related. There's no</p> <p>5 bolding. There's not even any underlining on the</p> <p>6 information related to having the lint vacuumed from</p> <p>7 the dryer once a year.</p> <p>8 On the next page, he points out the</p> <p>9 information later in the manual. Now, we've got to</p> <p>10 go farther into the manual to get information on the</p> <p>11 prohibition of using flexible foil, page 12 in the</p> <p>12 manual, for the greatest safety hazard associated</p> <p>13 with this dryer.</p> <p>14 And, he points out that a bunch of the</p> <p>15 information on the page says to use rigid, or</p> <p>16 flexible, metal duct. But he fails to note that</p> <p>17 under exhaust system requirements, Electrolux</p> <p>18 doesn't define what a flexible metal duct is. So,</p> <p>19 I'm pretty sure the last time I checked, aluminum is</p> <p>20 considered a metal, and it's flexible foil because</p> <p>21 it is flexible. So, do people confuse flexible</p> <p>22 metal to mean flexible foil.</p> <p>23 And then, of course, at the bottom of that</p> <p>24 page, Electrolux says it's okay to use flexible foil</p>
<p style="text-align: right;">103</p> <p>1 that Electrolux says don't use plastic or the</p> <p>2 combustible ductwork. But, they don't address the</p> <p>3 flexible foil on page 3. It's not until later in</p> <p>4 the manual that they even mention flexible foil</p> <p>5 venting, even though it's commonly used. It's used</p> <p>6 by most -- over 50 percent of the dryer users,</p> <p>7 according to Electrolux literature, I think. And,</p> <p>8 Carl King testified that it's very common in the</p> <p>9 fires he investigates. It's not even listed on page</p> <p>10 three under the warning regarding proper</p> <p>11 installations.</p> <p>12 And, he ignores the fact that Electrolux</p> <p>13 sold flexible foil venting at the time this dryer</p> <p>14 was manufactured, and sold. And, he completely</p> <p>15 ignores the fact that the flexible foil venting,</p> <p>16 that was on this dryer, was GE branded, and UL</p> <p>17 approved.</p> <p>18 So, two more the paragraphs down he finally</p> <p>19 references page 8. So now we get into page 8 of the</p> <p>20 manual for the critical safety information that</p> <p>21 people don't know about, or is the most likely</p> <p>22 hazard, and greatest hazard.</p> <p>23 And as I noted above in his opinions that</p> <p>24 information on page 8 of the manual related to</p>	<p style="text-align: right;">105</p> <p>1 as long as it's UL certified, and it's cut to</p> <p>2 length, and it's not crushed, or collapsed, and not</p> <p>3 to be used in the wall.</p> <p>4 So when we look at the flexible foil used in</p> <p>5 the Vitale install, it was cut. It may not have</p> <p>6 been the shortest possible length, but it was cut</p> <p>7 from an overall length.</p> <p>8 It was stretched out. It was not crushed or</p> <p>9 collapsed prior to the fire, that anyone is aware</p> <p>10 of. It was used as transition duct. There was a</p> <p>11 rigid piece of tubing in the wall. There's no</p> <p>12 evidence that there was resting on any sharp</p> <p>13 objects. It was UL certified, or UL approved. It</p> <p>14 was, in fact, GE branded. And, there's no</p> <p>15 information to indicate that it did not conform to</p> <p>16 local building codes. It ran up, and directly out</p> <p>17 of the building. So, it wasn't a convoluted run.</p> <p>18 So according to the manual, and what we find</p> <p>19 in the installation of the flexible foil duct, it</p> <p>20 met the manual requirements.</p> <p>21 And the other thing I note is that Purswell</p> <p>22 doesn't recognize anywhere in his report that</p> <p>23 Mr. Vitale took the vent off once a year, and</p> <p>24 cleaned it, consistent with the manual. Yet, there</p>

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<p>1 was still a fire.</p> <p>2 So, it's installed consistent with the</p> <p>3 manual. Its vent was cleaned consistent with the</p> <p>4 manual. And, yet, there's still a fire because</p> <p>5 they're not aware that lint could build up near the</p> <p>6 heat source behind the dryer drum, or under the</p> <p>7 dryer drum, and cause a fire.</p> <p>8 Q. Can I ask you question about what you had</p> <p>9 just testified to?</p> <p>10 A. Sure.</p> <p>11 Q. So, with regard to you made a comment that</p> <p>12 the vent is consistent with the manual?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. So, what forms your basis for that</p> <p>15 opinion? Have you examined the venting for the</p> <p>16 Vitale dryer?</p> <p>17 A. I have not examined it other than the</p> <p>18 photographs, and the descriptions provided by the</p> <p>19 other experts.</p> <p>20 Q. Okay. So anything else, as part of your</p> <p>21 review in this that supports the basis for that</p> <p>22 opinion?</p> <p>23 A. Well, my understanding is that Mr. Vitale</p> <p>24 unhooked it, and checked it each year. There's no</p>	<p>1 A. Bottom of page 10, and going to page 11.</p> <p>2 Q. Got it. Thanks.</p> <p>3 A. And, I just note that not all the</p> <p>4 information on the label is required by UL or ANSI.</p> <p>5 Brian Ripley testified to that. I go through the</p> <p>6 label that's on there. In the first part, it says</p> <p>7 to avoid fire hazard, personal injury, fire damage,</p> <p>8 including spontaneous combustion. And, then there's</p> <p>9 a list of steps: One is clean lint screen before</p> <p>10 and after each load. And, I note that Mrs. Vitale</p> <p>11 said she did that. Dry only fabrics which have been</p> <p>12 washed with water. I haven't seen any testimony</p> <p>13 that that was violated. He says next, the label</p> <p>14 says a clothes dryer produces combustible lint, and</p> <p>15 should be exhausted outdoors, which this dryer was.</p> <p>16 And then he quotes care should be taken to prevent</p> <p>17 the accumulation of lint around the exhaust opening,</p> <p>18 and surrounding area.</p> <p>19 And, I note the Vitales' testimony is</p> <p>20 consistent with this, too. They pulled the dryer</p> <p>21 out once a year, remove the duct, cleaned the duct,</p> <p>22 cleaned and replaced the outside hood. Mrs. Vitale</p> <p>23 said she dusted, and used the Dustbuster for lint to</p> <p>24 dust around on the dryer. So, apparently, it's</p>
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<p>1 testimony that it was bent, or crinkled, or stepped</p> <p>2 on, prior. There was no evidence that it was</p> <p>3 sitting on a sharp object. According to the</p> <p>4 measurements, it's not the original length when you</p> <p>5 buy these. They're sold in eight-foot lengths, and</p> <p>6 it's listed as slightly greater than four feet, I</p> <p>7 think.</p> <p>8 It was used as transition duct. It wasn't</p> <p>9 used in the wall. There was a rigid metal piece in</p> <p>10 the wall. There's no testimony that it violated any</p> <p>11 of the local building codes.</p> <p>12 Q. Anything else?</p> <p>13 A. I think that's all.</p> <p>14 Q. Okay. Do you want to stop now and eat, or</p> <p>15 do you want to finish going through Purswell's</p> <p>16 report?</p> <p>17 A. Yes. There's just a few more.</p> <p>18 Q. Okay. Let's keep going, and then that will</p> <p>19 be a good place to stop.</p> <p>20 A. The next section is on the on-product label</p> <p>21 and instructions. They're saying there are three</p> <p>22 on-product labels.</p> <p>23 Q. Can you just give me a page number for</p> <p>24 Purswell's report?</p>	<p>1 consistent with the label.</p> <p>2 At the bottom of the label, Purswell notes</p> <p>3 that if you have a question about your appliance,</p> <p>4 you can contact GE Appliances.</p> <p>5 And, I note that the Vitales didn't have a</p> <p>6 question regarding the dryer. They testified they</p> <p>7 weren't having any problems with the dryer. So, why</p> <p>8 would they call GE if they didn't have questions.</p> <p>9 He notes that Microsoft Word reports a</p> <p>10 readability grade of 7-1/2 for these statements.</p> <p>11 And, I note again that the guideline for Product</p> <p>12 Safety Information and Warning is the sixth-grade</p> <p>13 level for the general public.</p> <p>14 Next, he talks about the temporary</p> <p>15 checklist, and I just want to note that the</p> <p>16 temporary checklist -- and temporary being the</p> <p>17 important part -- did absolutely no good for the</p> <p>18 Vitales because they moved into the house several</p> <p>19 years after it was installed, and that checklist was</p> <p>20 long gone.</p> <p>21 I also note that Purswell ignores the</p> <p>22 testimony of Carl King as to why they put the</p> <p>23 checklist on the top front of the dryer, and that is</p> <p>24 to be, in quote, "in your face" to make sure the</p>

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<p>1 user sees it as opposed to putting a warning on the 2 back of the dryer, or the dryer door frame on the 3 hinge side of the dryer. 4 He talks more about the dryer checklist. It 5 says three factors cause dryers to take too long: 6 Long duct run, too many elbows, clogged duct pipe, 7 or vent hood. And, I note that all three of these 8 were not applicable to the Vitale dryer. 9 He also notes that the checklist says the 10 manufacturer recommends using rigid, or flexible 11 metal vent systems. And, I note that key word is 12 "recommends". As Shelley Claussen testified, 13 "recommends" is not a requirement. It is a 14 recommendation. You can do it; you may not have to 15 do it, but it's certainly not a requirement. 16 And, again, I note that he fails to 17 acknowledge that both GE and Electrolux marketed, 18 and sold, flexible foil venting at and around the 19 time this dryer was manufactured, and sold. 20 And, finally, I note that I have not seen 21 any method, or analysis, other than his personal 22 opinion, unsupported by any specific scientific 23 literature, and the general literature that he did 24 cite, do not support his opinions.</p>	<p>1 to decide. 2 Q. Of course. 3 A. I would think that his report is more -- 4 questions regarding his report are probably better 5 directed to Mike Stoddard, or John Fry. I just 6 denoted some issues going through it myself that 7 were incorrect in his statements, so I just marked 8 them on the report. 9 Q. Okay. If you would, can you go through 10 those with me so in the event you are asked 11 questions about Mr. Bills' report at trial, I would 12 like to know what you say? 13 A. Sure. Well, the first has to do with the 14 fact that he is saying that the install -- let me -- 15 Q. And, if you're looking at a particular page, 16 if you could just tell me what page. 17 A. Will do. On page 6 under Review of File 18 Materials, it says the use of foil venting as the 19 transition duct was in direct violation of the 20 installation instructions. 21 And, he notes this a few times in the 22 report. And, I note that that's not true. The 23 installation instructions allow the use of flexible 24 foil venting.</p>
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<p>1 And, that's my last comment. 2 Q. Anything else with regard to Dr. Purswell's 3 report, that you haven't already testified to in 4 rebuttal? 5 A. I think that pretty much covers it. 6 MS. YEMMA: Off the record. 7 (Discussion held off the record.) 8 (Lunch brake) 9 BY MS. YEMMA: 10 Q. Dr. Vigilante, we took a break for lunch, 11 and now we are back on the record. And I think 12 where we stopped is we had just gone through Dr. 13 Purswell's opinions; you gave me your rebuttal to 14 that. And, we were finished with that. Right? 15 A. Yes, I believe so. 16 Q. All right. So turning to Randy Bills, who 17 is our engineering expert in this case. Did you 18 have an opportunity to review his report, and 19 opinions? 20 A. Yes. 21 Q. Do you, at trial, anticipate offering any 22 rebuttal to anything he offered in his report? 23 A. That's a good question. I don't really 24 anticipate it but, of course, that's for Mr. Hughes</p>	<p>1 And much like Mr. Purswell, he doesn't 2 address the fact that Electrolux, and GE, both 3 marketed and sold flexible foil venting at about the 4 same time this dryer was manufactured, and sold. 5 The other thing I noted -- again, this is 6 something I think is strictly Mike Stoddard's 7 area -- but he notes on page 27 that the that high 8 thermal limit switch was cycling, and he notes that 9 the limit switch cycles due to excess of high 10 temperatures in the dryer. And he says that 11 excessive high temperatures in the dryer result of 12 reduced airflow to the unit. 13 So, from a fire safety standpoint, and a 14 applied desire standpoint, you have a safety device 15 in the dryer that's going off because of excessive 16 heat in the dryer due to reduced airflow. Why 17 didn't they tie that in to shut the dryer down, or 18 provide an indicator light to the user to alert them 19 of the fact that there hot air in the dryer, or 20 excessive temperatures in the dryer due to reduced 21 airflow. 22 So, it's another system that Electrolux had 23 the potential opportunity to build on, and why they 24 didn't build off it is, you know, like I said is</p>

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<p style="text-align: right;">114</p> <p>1 questionable to me, and the ability to do so is</p> <p>2 something I defer to Mike Stoddard.</p> <p>3 And on page 31, he notes that the flexible</p> <p>4 foil ducting was too long, and had not trimmed to</p> <p>5 the minimum length necessary. But, he gives the</p> <p>6 length is over 4 feet. And most of the dryer ducts</p> <p>7 that I have seen is at least 6 feet, 8 feet, long.</p> <p>8 So it had to be trimmed somewhat; it just wasn't</p> <p>9 trimmed enough.</p> <p>10 Q. You mentioned that you have seen. Have you,</p> <p>11 in either connection with this case, or other cases,</p> <p>12 examined flexible foil venting?</p> <p>13 A. Well, yes. The fact of the matter is before</p> <p>14 I got involved in these cases, I used flexible foil</p> <p>15 venting, that I purchased from Home Depot, Lowe's,</p> <p>16 or what have you. I have known family members to</p> <p>17 use flexible foil venting. As I got involved in</p> <p>18 these cases, you know, like I said I've taken</p> <p>19 photographs of flexible foil venting that's sold at</p> <p>20 Lowe's, and so forth, and I did print out some of</p> <p>21 the pictures I took from -- it was either Lowe's, or</p> <p>22 Home Depot -- I don't remember which -- of the</p> <p>23 different types of flexible foil ducting they sell.</p> <p>24 And, I downloaded a picture from the -- from Sears</p>	<p style="text-align: right;">116</p> <p>1 been pulled into the open flame, and ignited.</p> <p>2 So, he just gets done telling us in that</p> <p>3 sentence that there's no evidence that allows anyone</p> <p>4 to form an opinion, and in the next sentence later,</p> <p>5 he gives an opinion.</p> <p>6 So, that's just a -- you know, it's an</p> <p>7 inconsistency that I noted in his report.</p> <p>8 Q. Okay. Anything else, any other criticisms?</p> <p>9 A. Well, on the next page on 35 on the first</p> <p>10 full paragraph about almost to the end, he says the</p> <p>11 results of their testing did not reveal any abnormal</p> <p>12 accumulations of lint in the Electrolux dryer.</p> <p>13 And, I didn't go back and look it up, but</p> <p>14 I'm fairly certain that Ripley and/or King testified</p> <p>15 that in the life cycle testing, they found burnt</p> <p>16 lint in their dryer, and they had a lint dryer fire</p> <p>17 in one of their testing units.</p> <p>18 So, obviously, he's not addressing those</p> <p>19 facts in his opinions.</p> <p>20 Q. Anything else?</p> <p>21 A. On his cause analysis, page 37, he says an</p> <p>22 improperly-installed vent system will reduce the</p> <p>23 airflow through the dryer resulting in lint</p> <p>24 accumulation in the dryer. Proper airflow through a</p>
<p style="text-align: right;">115</p> <p>1 regarding the flexible foil duct they sold, which</p> <p>2 was five feet in length.</p> <p>3 Q. And, I note you are looking at your</p> <p>4 notebook. Can you just tell me what tab you're</p> <p>5 looking at?</p> <p>6 A. Tab 5.</p> <p>7 Q. Okay. Sorry.</p> <p>8 A. That's okay.</p> <p>9 Q. Do you have anything else to add to that?</p> <p>10 A. No.</p> <p>11 Q. All right. Just going back to Mr. Bills'</p> <p>12 opinion in his report, any other rebuttal? We were</p> <p>13 on page 31, and you were talking about his comments</p> <p>14 with regard to the venting, the length of it.</p> <p>15 A. The other thing I noted was on page 34.</p> <p>16 And, again, this is a Mike Stoddard area. I just</p> <p>17 noted the discrepancy at the bottom of page 34, he</p> <p>18 states that SEA disagrees that the first fuel</p> <p>19 ignited had to be lint collected within the heater</p> <p>20 pan mounted to the rear wall of the dryer cabinet.</p> <p>21 And, he says no physical evidence exists that would</p> <p>22 allow anyone to opine as to from where the lint that</p> <p>23 was ignited originated. SEA believes that lint on</p> <p>24 the gas burner on the combustion chamber could have</p>	<p style="text-align: right;">117</p> <p>1 dryer is important -- emphasis on the word</p> <p>2 important -- for the dryer to be able to function</p> <p>3 correctly.</p> <p>4 And I note even though that's correct,</p> <p>5 Electrolux did nothing to actively monitor or alert</p> <p>6 users of inadequate airflow.</p> <p>7 Q. Anything else?</p> <p>8 A. I don't know why he didn't address that</p> <p>9 fact. I mean, they should have have done something</p> <p>10 to monitor and alert users because it's so</p> <p>11 important. But, I think that's all I have for</p> <p>12 Mr. Bills' report.</p> <p>13 Q. Okay. If we can return back to your report</p> <p>14 in this case, Vigilante-5.</p> <p>15 A. Yes.</p> <p>16 Q. And, on page 2 --</p> <p>17 A. Oh, can I make a note on my report before</p> <p>18 you ask a question?</p> <p>19 Q. Sure.</p> <p>20 A. There was a typo, and it changed</p> <p>21 the sentence from a negative to a positive. So,</p> <p>22 it's on page 36, bottom of page 36.</p> <p>23 Q. Okay.</p> <p>24 A. The bottom paragraph that starts with David</p>

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<p style="text-align: right;"><b>118</b></p> <p>1 Fuller, it says in the second sentence, "Fuller 2 testified that although he cleaned his dryer once a 3 year, he did disassemble the dryer." It should be 4 he did not disassemble the dryer. 5 Q. Okay. 6 A. I noticed, like, two other typos, but that 7 one was a substantive one. 8 Q. Okay. And as you sit here today, Dr. 9 Vigilante, are there any other substantive changes, 10 other than the change you just made on page 36, that 11 you would like to make in your report? 12 A. No, not that I noticed. 13 Q. And as we proceed through the rest of your 14 deposition, if anything comes up, you'll let me 15 know. 16 A. Yes. 17 Q. Okay. So if you would turn your attention 18 to page 2 of your report, and I think you have a 19 copy in your binder, if you want to use that copy. 20 A. Yes. 21 Q. So, in the -- I'll call it the fourth 22 paragraph, it starts out, "I may use the 23 following"...</p>	<p style="text-align: right;"><b>120</b></p> <p>1 Q. Can you tell me what paragraph you are 2 referring to? 3 A. The big paragraph starting with "Stoddard 4 concluded". 5 Q. Okay. 6 A. So about halfway down, I give examples of 7 different indicator lights on different types of 8 products. 9 Q. Okay. How about with regard to the 10 warnings? You said on-product warnings and 11 indicator lights in that sentence on the page 2. 12 A. Yes. I don't know that -- I don't know that 13 I figured out exactly which other example on-product 14 warnings to provide. 15 Q. Okay. Is that something you plan to 16 investigate further, and identify examples? 17 A. Depending upon what Mr. Hughes' trial 18 strategy is. 19 Q. Okay. And, I don't want to get into that 20 right now. 21 But as you sit here today, your testimony is 22 that you don't have any examples of other on-product 23 warnings? 24 A. I don't think I've come up with specific</p>
<p style="text-align: right;"><b>119</b></p> <p>1 Q. Do you see that? 2 A. Yes. 3 Q. Okay. So, I'll just read the sentence for 4 context. "I may use the following materials as 5 exhibits to illustrate my testimony: Photographs 6 taken of the incident dryer; instructional material 7 and manuals provided by GE and/or Electrolux; 8 examples of on-product warnings and indicator lights 9 used on other types of products; example on-product 10 warnings and indicator lights for the dryer as 11 described in Section E-3 of this report, and the 12 references and standards cited within this report." 13 Did I read that correctly? 14 A. Yes, ma'am. 15 Q. So I have a question with regard to that 16 examples of on-product warnings and indicator lights 17 used on other types of products. Is that 18 information contained either on the hard drive, that 19 you brought with you, or in your notebook? 20 A. It's in the hard drive, and it's referenced 21 in my report. 22 Q. Okay. Can you just point me to where that 23 is referenced? 24 A. Sure. That's on page 29.</p>	<p style="text-align: right;"><b>121</b></p> <p>1 examples of on-product warnings that I would use in 2 the case. 3 Q. And with regard to the indicator lights, is 4 there anything other than what you've mentioned on 5 page 29? 6 A. I've mentioned them on page 29, and then I 7 produced a bunch of manuals for products with 8 indicator lights. 9 Q. And, that's on the white hard drive? 10 A. Yes, under dryer literature example, 11 indicator lights. 12 Q. And are any of those indicator lights on 13 clothes dryers? 14 A. Yes. There's one on the Fisher Paykel DEG1 15 dryer. 16 Q. And, do you happen to know the Fisher Paykel 17 dryer, that you're referring to, do you know when it 18 was manufactured? 19 A. There's two. There's a Whirlpool dryer, 20 too. 21 Q. Okay. 22 A. But, the Fisher Paykel manual was published 23 in November, 2005. 24 Q. When you say "published", you are talking</p>

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<p>1 about the product literature?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. And, then, what about the Whirlpool</p> <p>4 dryer?</p> <p>5 A. The Whirlpool dryer, I don't have a date on</p> <p>6 it. I've got the model number, so I can go back and</p> <p>7 look that up. But, I don't have a date on it. It's</p> <p>8 a Whirlpool Duet vent indicator, Model WED, as in</p> <p>9 David, 70HEBW0.</p> <p>10 Q. Okay. So just those two dryers, the Fisher</p> <p>11 Paykel, and the Whirlpool; is that right?</p> <p>12 A. If that's what I provided on the hard drive.</p> <p>13 Q. Okay. Do you have an understanding of when</p> <p>14 the Vitales' dryer was manufactured?</p> <p>15 A. 2004.</p> <p>16 Q. And, are you aware of any dryers that were</p> <p>17 manufactured, and sold, in 2004, that had indicator</p> <p>18 lights?</p> <p>19 A. I have to go back, and see whether or not</p> <p>20 Electrolux, in their best models, have indicator</p> <p>21 lights. You mean for airflow?</p> <p>22 Q. For airflow.</p> <p>23 A. Yes. I have to go back, and look to see if</p> <p>24 they have that in 2004. I know in later models,</p>	<p>1 A. Yes, ma'am.</p> <p>2 Q. Okay. Did you have more than one phone call</p> <p>3 with Mr. Stoddard on that date? I only ask because</p> <p>4 it says teleconferences?</p> <p>5 A. By my guess, that's a typo.</p> <p>6 Q. Okay. And, was that the only conversation</p> <p>7 you had with Mike Stoddard regarding this specific</p> <p>8 matter, the one on --</p> <p>9 A. Yes.</p> <p>10 Q. -- January 27th --</p> <p>11 A. Most likely.</p> <p>12 Q. Okay. Have you had interaction with</p> <p>13 Mr. Stoddard in connection with other Electrolux</p> <p>14 cases that you have?</p> <p>15 A. Yes.</p> <p>16 Q. Have you ever been to the Wright Group?</p> <p>17 A. Their office?</p> <p>18 Q. To their office, yes.</p> <p>19 A. No, I have not.</p> <p>20 Q. Have you ever met Mike Stoddard in person?</p> <p>21 A. I don't think so.</p> <p>22 Q. So, how do you communicate with him?</p> <p>23 A. Phone, and e-mail.</p> <p>24 Q. Did you have any e-mail communications with</p>
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<p>1 they put it in their best models.</p> <p>2 Q. How about with regard to any other dryer</p> <p>3 manufacturers?</p> <p>4 A. Not offhand.</p> <p>5 Q. Okay. Is that something you've looked into</p> <p>6 as part of either this case, or the other dryer</p> <p>7 cases you have against Electrolux?</p> <p>8 A. I haven't tried to go back, and identify</p> <p>9 them all. I think I relied upon Mike Stoddard to do</p> <p>10 that in research.</p> <p>11 The Fisher Paykel, and the Whirlpool, I just</p> <p>12 happened upon.</p> <p>13 Q. How did you happen upon them?</p> <p>14 A. I don't recall at this time. It's been a</p> <p>15 while.</p> <p>16 Q. Is that something you were able to access</p> <p>17 online?</p> <p>18 A. The Whirlpool dryer is a photograph, so I</p> <p>19 don't know where I got it from.</p> <p>20 The Fisher Paykel was a manual that I, most</p> <p>21 likely, downloaded from the web.</p> <p>22 Q. Dr. Vigilante, on page 3 of your report, you</p> <p>23 reference teleconferences with Mike Stoddard on</p> <p>24 January 27th, 2016. Do you see that?</p>	<p>1 Mr. Stoddard in connection with the Vitale case?</p> <p>2 A. I don't believe so.</p> <p>3 Q. Have you ever spoken with Ron Parsons from</p> <p>4 the Wright Group?</p> <p>5 A. Yes.</p> <p>6 Q. Did you have any conversations with him in</p> <p>7 connection with this case?</p> <p>8 A. I haven't talked to Ron in a couple years.</p> <p>9 Q. Okay, that makes it easier.</p> <p>10 So, can you tell me, to the extent you</p> <p>11 recall, about your conversation with Mr. Stoddard on</p> <p>12 January 27th?</p> <p>13 A. I don't recall what my conversation was with</p> <p>14 Mr. Stoddard on the 27th. I don't recall.</p> <p>15 Q. Did you take any notes during that</p> <p>16 conversation?</p> <p>17 A. I don't think so.</p> <p>18 Q. Have you spoken with -- well, do you know</p> <p>19 who John Fry is? And, I think you mentioned him</p> <p>20 earlier.</p> <p>21 A. Yes. I may have had my report up, my draft</p> <p>22 report up when talking to Mike, and may have made</p> <p>23 notes directly in there. But I don't recall seeing</p> <p>24 it in my report. But, typically, if I have a</p>



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<p style="text-align: right;">126</p> <p>1 teleconference with Mike, and I don't have his  2 report, I'll take notes on the conversation. But  3 since I don't have the notes, I don't think it was a  4 very -- and I have -- his report is dated so much  5 earlier than mine, that I don't think that -- I  6 don't think that I took very many notes. Well, it's  7 only three days earlier. Is that right? Yeah,  8 okay. Yeah, I don't know why I don't have notes.  9 Q. Do you typically take notes?  10 A. That's what I said, typically if I am  11 working on a report, and Mike is involved in the  12 case, and I don't have his report, I'll call him,  13 and I'll ask him what his opinions are, and what his  14 findings are, if he had talked to the homeowners,  15 what the scene looked like, what they found with the  16 investigation of the scene, and/or product. And I,  17 typically, will take notes.  18 So why I didn't take notes this time around,  19 I don't know.  20 Q. Did you have any conversations with John Fry  21 in connection with this matter?  22 A. No, I don't believe so.  23 Q. Did you speak with either Ursy, or Joseph  24 Vitale in connection with this matter?</p>	<p style="text-align: right;">128</p> <p>1 on the payroll in one form, or another. Carl King  2 is the only deposition transcript I read  3 specifically for this case. All the other  4 transcripts I had read for other cases either in the  5 past or, for example, Dave Fuller's, I read while I  6 was drafting this report. But, his deposition was  7 taken in the Cloud. And, the same thing with, I  8 think, Carl King's, I was reading that about the  9 same time I was putting together my analysis for  10 this case.  11 Q. And, you have a number of the documents from  12 the State Farm --  13 A. Yes.  14 Q. -- consolidated action listed. It's, like,  15 the third bullet on page 3. So -- I'm not going to  16 add up the numbers -- but, have you reviewed all of  17 the documents within the bates ranges, that you've  18 provided?  19 A. No.  20 Q. Okay. Have you reviewed some of the  21 documents in the ranges?  22 A. Some of them.  23 Q. Okay. And, did you take any notes while you  24 were reviewing the documents?</p>
<p style="text-align: right;">127</p> <p>1 A. I don't believe so.  2 Q. Is that something you typically do in  3 connection with your evaluation in speaking with  4 homeowners?  5 A. It depends on what is covered in the  6 deposition because a lot of times in the deposition,  7 some of the topics I am interested in are not  8 covered, and then I will request a telephone  9 conversation with the homeowners.  10 Q. In this specific case, did you feel like the  11 information that you were looking for was adequately  12 covered in the deposition, that you didn't have to  13 speak with them separately?  14 A. That's correct.  15 Q. Dr. Vigilante, you have listed on page 3 a  16 number of deposition transcripts from -- well from  17 former Electrolux employees, we'll classify them as.  18 Are these deposition transcripts that you  19 reviewed specifically in connection with this case,  20 or had you reviewed them previously for other  21 Electrolux cases?  22 A. Yes. The only one that I reviewed of an  23 ex-Electrolux employee -- or, I don't know if that's  24 the way you describe Carl King, Carl King is still</p>	<p style="text-align: right;">129</p> <p>1 A. Well, some of them are in the list of --  2 some of these deposition are in that range of bates  3 numbers. So, I did take notes on some of them. But  4 if I had notes, I would have put them in my file,  5 and I don't have any in my file. So other than the  6 deposition summaries for some of the depositions, I  7 didn't write any notes.  8 Q. And the summaries that you created, those  9 are all contained in what was copied from your  10 notebook, and are on the hard drive. Right?  11 A. All the summaries I have are on the hard  12 drive.  13 Q. Did you conduct any surveys specifically for  14 this case?  15 A. What kind of surveys?  16 Q. Surveys -- well, really any kind of surveys.  17 I realize it's a broad question. It was intended to  18 be broad.  19 A. Okay. I surveyed different appliance  20 stores -- I'm sorry -- dryer vent cleaning services  21 yesterday. One, in part for preparation for today  22 and two, it's time to do my dryer vent at home so I  23 kind of combined both.  24 Q. Apart from the survey of the dryer vent</p>

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<p style="text-align: right;">130</p> <p>1 cleaning companies, any other surveys, that you 2 conducted?</p> <p>3 A. I did survey the literature for things that 4 were relevant to my opinions, and analysis.</p> <p>5 Q. Okay. Anything else?</p> <p>6 A. The only other survey type activity would 7 have been looking at different dryer manufacturers. 8 But, I don't know that I did that specific for this 9 case.</p> <p>10 Q. Let's talk about the survey of the dryer 11 vent cleaning company. Can you tell me specifically 12 what you did?</p> <p>13 A. I went to the YellowPages.com, and looked up 14 folks that did dryer vent cleaning, that were in a 15 reasonable proximity to my ZIP Code. And then I 16 went to Google Maps, and put in my ZIP Code, and 17 then did a search nearby for dryer vent cleaning. 18 And, I went through and called the different 19 services, and asked them what they charged, what 20 they did, if they -- two things became clear again: 21 One, I didn't notice during my first survey a couple 22 years ago, but this survey, a bunch of the services 23 weren't taking the transition duct off the dryer. 24 They were going to run a cleaning tool from the</p>	<p style="text-align: right;">132</p> <p>1 them if they cleaned the interior of the dryer. 2 They said, yeah, we clean the interior of the dryer. 3 And I asked them how, and they all pretty much said 4 they stick a vacuum down the lint trap. And, that 5 would get the lint from under the drum, and so 6 forth.</p> <p>7 And then when I followed up with a question, 8 what about the lint behind the drum, they all kind 9 of scratched their head -- figuratively, not 10 literally.</p> <p>11 And then one guy I asked, he told me that it 12 wasn't necessary to clean the interior of the dryer; 13 you only had to clean the exhaust, which I found 14 disturbing, as well, considering that Electrolux is 15 recommending you clean both.</p> <p>16 So, there's still a lot of misinformation in 17 the folks that are handling these services for the 18 general public, for the consumer.</p> <p>19 And, then I noted that the prices range 20 anywhere from 99 bucks to \$150. And, that's just to 21 get the vent cleaned. So, like I said, if you throw 22 another \$100 to \$150 on it, you're paying almost the 23 price of the dryer every year to get it cleaned. 24 Q. How many companies did you call?</p>
<p style="text-align: right;">131</p> <p>1 outside into the dryer without removing the 2 transition duct. And I questioned, kind of softly 3 questioned them why they wouldn't take the 4 transition duct off. And people that reported was 5 that it wasn't necessary. They could know when they 6 get into the dryer. One guy told me only if the 7 homeowner asked will they take the transition duct 8 off.</p> <p>9 So I found that certainly disturbing, 10 particularly by the fact I think the recommendation 11 from Electrolux is to take it apart, and clean it, 12 as opposed to just running a brush from the outside 13 all the way into the dryer.</p> <p>14 And then, two, they weren't taking apart the 15 dryer. They weren't going to take the drum out. 16 The most common reason was -- or the only reason 17 they gave was -- I shouldn't say the most common -- 18 all of them that gave a reason was because they were 19 afraid they would break the dryer, and they didn't 20 want to have to pay for the dryer -- replace the 21 dryer. They weren't appliance service repairmen, so 22 they weren't going to open the dryer.</p> <p>23 A few of them had told me that they cleaned 24 the interior of the dryer, when I initially asked</p>	<p style="text-align: right;">133</p> <p>1 A. I do have those in my summary, too. 2 Q. Is that something that's printed out here? 3 A. No, only e-mail. Sorry, I didn't think 4 about it.</p> <p>5 Q. That's okay. No need to apologize.</p> <p>6 A. I called -- I got ahold of six of the ads on 7 the Yellow Pages, but one of the ads was the same 8 company as one of the other ones. So, I wouldn't 9 count that as two.</p> <p>10 Q. So, it would be five?</p> <p>11 A. Five separate companies.</p> <p>12 Q. And, you were searching using your home 13 address, or --</p> <p>14 A. ZIP Code.</p> <p>15 Q. Right, your ZIP Code.</p> <p>16 A. Well, actually, for the Yellow Pages, I used 17 Phoenixville, PA.</p> <p>18 Q. Okay.</p> <p>19 A. For the Google Maps, which was -- the five 20 was only Yellow Pages. And, then I called five from 21 Google Maps. And, I think I got ahold of -- I'm 22 sorry. I called four from Google Maps.</p> <p>23 Q. Did you use a ZIP Code to do the Google Map 24 search?</p>

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<p style="text-align: right;">134</p> <p>1 A. Yes, 19460.</p> <p>2 Q. Okay. So when you did the Google Map</p> <p>3 search, and you found four companies, and then the</p> <p>4 Yellow Pages search was really five companies?</p> <p>5 A. No. I mean, there were -- when I did the</p> <p>6 searches, there were more companies. For the Yellow</p> <p>7 Pages, I started at the top, and went down, and I</p> <p>8 stopped after the -- actually, the seventh or eighth</p> <p>9 one. One of them I called, and nobody answered.</p> <p>10 So, I didn't get any information from them. One of</p> <p>11 them was in New Jersey. I don't know why that</p> <p>12 showed up. But, I started at the top and went</p> <p>13 through number one, two, three, four. Number five,</p> <p>14 I couldn't reach. Number six was in New Jersey.</p> <p>15 Number seven was the same as number one. And then</p> <p>16 number eight was in Delaware. And, number nine was</p> <p>17 in Quakertown. So, I contacted nine. I spoke to</p> <p>18 nine, seven, four, three, two, one.</p> <p>19 Q. And, Dr. Vigilante, in your notes, did you</p> <p>20 identify the names of the companies that you called?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. And, did you take notes from those</p> <p>23 conversations?</p> <p>24 A. Yes.</p>	<p style="text-align: right;">136</p> <p>1 that?</p> <p>2 A. Well, two, you know, of the references I</p> <p>3 cited include both general human factors principles,</p> <p>4 theories, guidelines; warnings, theories,</p> <p>5 guidelines; standards for warnings. And, then</p> <p>6 they've got a bunch of stuff specific to clothes</p> <p>7 dryers from the UL2158 standard to the CPSC stuff,</p> <p>8 the NFPA stuff, the U.S. Fire Administrative stuff.</p> <p>9 And, then I went through, again, the literature that</p> <p>10 I have in -- that we talked about in tab number</p> <p>11 five.</p> <p>12 Q. Anything else?</p> <p>13 A. I think that's about it.</p> <p>14 Q. Okay. And then the third thing you said was</p> <p>15 that you looked at different dryer manual -- well, I</p> <p>16 wrote manual. Is that what you said?</p> <p>17 A. Manufacturers.</p> <p>18 Q. Manufacturers. Thank you.</p> <p>19 A. Dryer manufacturers, yes.</p> <p>20 Q. Okay. So, tell me what you did in regards</p> <p>21 to looking at different dryer manufacturers?</p> <p>22 A. Well, I think I corrected myself. I wasn't</p> <p>23 sure I would consider that specific to this case.</p> <p>24 It's stuff I had done in the past, that's applicable</p>
<p style="text-align: right;">135</p> <p>1 Q. Did you ask each of them what they would</p> <p>2 charge?</p> <p>3 A. Yes, and I noted that, too. This is the</p> <p>4 Yellow Pages; these are my notes. (Indicating)</p> <p>5 Q. Okay.</p> <p>6 A. And, then, also in that same file was the</p> <p>7 individual ones from Google Maps. This is one from</p> <p>8 Google Maps. (Indicating)</p> <p>9 Q. Okay.</p> <p>10 A. So I went to their web page, and then put</p> <p>11 some notes. And, like I said, there was four of</p> <p>12 them I got ahold of. I actually got hold of a fifth</p> <p>13 one, but he didn't call me until 7 o'clock last</p> <p>14 night, and at that time, I had closed the file.</p> <p>15 But, he was consistent with the rest of them.</p> <p>16 Q. Okay. And, can you just tell me what folder</p> <p>17 those documents are in on the flash drive?</p> <p>18 A. Sure. It's on our dryer lit, I-i-t, and</p> <p>19 then under cleaning calls.</p> <p>20 Q. Dryer lint?</p> <p>21 A. No, no, lit, I-i-t, literature, dryer lit.</p> <p>22 Q. Okay. You also testified earlier that you</p> <p>23 had done a literature survey. Can you be a little</p> <p>24 more specific about what you did in connection with</p>	<p style="text-align: right;">137</p> <p>1 to this case.</p> <p>2 Q. And, you're relying on that information in</p> <p>3 forming your opinion?</p> <p>4 A. Somewhat, yes.</p> <p>5 Q. Okay.</p> <p>6 A. So, for example, I understand that there are</p> <p>7 different types of dryer designs. I understand</p> <p>8 that -- I'm not aware of any other dryer</p> <p>9 manufacturer that has a -- I don't know how to put</p> <p>10 this -- the same type of a problem that Electrolux</p> <p>11 has with dryer vent buildup behind the -- near the</p> <p>12 heat source, and propensities for fires. So,</p> <p>13 certainly that's a factor in my analysis.</p> <p>14 Q. Well, what do you understand with regard to</p> <p>15 the different types of dryer designs?</p> <p>16 A. Well, my understanding is that two main</p> <p>17 things are of concern: One is the bulkhead versus</p> <p>18 the ball-hitch. And, then it's my understanding</p> <p>19 that some dryer manufacturers will design for fire</p> <p>20 containment, drum fire containment. And, Electrolux</p> <p>21 generally has not been concerned about that in the</p> <p>22 timeframe of the Alliance series platform. I think</p> <p>23 it's not until the new UL standard came up, that it</p> <p>24 required the testing that they started designing</p>

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<p style="text-align: right;">138</p> <p>1 for.</p> <p>2 Q. So, you understand the dryer in this case</p> <p>3 was a GE branded dryer. Correct?</p> <p>4 A. Yes.</p> <p>5 Q. Do you know whether GE imposed any fire</p> <p>6 containment requirements on Electrolux in connection</p> <p>7 with the manufacture of this dryer?</p> <p>8 A. I do know that in the late '90s, they have</p> <p>9 the SEE test, they were requiring Electrolux to</p> <p>10 pass. But, I didn't see anything, or anyone talk</p> <p>11 about whether or not, it applied to the incident</p> <p>12 dryer. So, I don't know if it was a requirement, or</p> <p>13 not, at this point.</p> <p>14 I think that my understanding, too, was that</p> <p>15 Mrs. Vitale left the door open. So, I'm not sure</p> <p>16 how relevant it is to the causation.</p> <p>17 Q. I just had a followup of something you said.</p> <p>18 Did you read anything to suggest to you</p> <p>19 that, perhaps, the Vitale's dryer would not have</p> <p>20 been subject to the SEE test?</p> <p>21 A. I'm sorry, I didn't see anything either way.</p> <p>22 Q. Okay. It's just a question in your mind</p> <p>23 whether -- because you haven't seen anything either</p> <p>24 way whether it would have been subject to the test,</p>	<p style="text-align: right;">140</p> <p>1 A. Whirlpool or Maytag.</p> <p>2 Q. Whirlpool or Maytag, okay.</p> <p>3 So, Whirlpool or Maytag dryer, and that</p> <p>4 involved a fire?</p> <p>5 A. I believe so.</p> <p>6 Q. Do you know whether it was alleged that it</p> <p>7 was a lint fire?</p> <p>8 A. My memory is it was alleged it was a</p> <p>9 spontaneous combustion due to oily rags, or</p> <p>10 something.</p> <p>11 Q. During your entire career, have you ever</p> <p>12 worked on a case involving a lint fire in a bulkhead</p> <p>13 design dryer?</p> <p>14 A. No.</p> <p>15 Q. Dr. Vigilante, do you have an opinion -- and</p> <p>16 you may have addressed this earlier, but I just</p> <p>17 wanted to make sure for the record. Do you have an</p> <p>18 opinion whether the Vitales' dryer was installed in</p> <p>19 accord with the instructions, that were provided by</p> <p>20 Electrolux?</p> <p>21 A. It looks like it was.</p> <p>22 Q. You state "it looks like it was". Is there</p> <p>23 some reservation you have in saying yes?</p> <p>24 A. Well, number one, I wasn't asked to look at</p>
<p style="text-align: right;">139</p> <p>1 or not?</p> <p>2 A. Well, no. I'm not questioning it. It's not</p> <p>3 relevant to what I'm doing in this case. I didn't</p> <p>4 see whether they did, or not. Like I said, I don't</p> <p>5 think it's related to causation, but these are</p> <p>6 questions for Fry and Stoddard.</p> <p>7 The only thing I noted was that, generally,</p> <p>8 when I surveyed -- the question was with regards to</p> <p>9 surveying dryer manufacturers. The two issues that</p> <p>10 I saw were some manufacturers required a fire</p> <p>11 containment; Electrolux didn't. And, the bulkhead</p> <p>12 versus Ball-Hitch.</p> <p>13 Q. What manufacturers did you note required the</p> <p>14 containment?</p> <p>15 A. I know GE did.</p> <p>16 Q. And, are you referring to the SEE test when</p> <p>17 you say that?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. Any other manufacturers?</p> <p>20 A. I don't know -- yes, I don't know</p> <p>21 specifically.</p> <p>22 Q. Okay. Earlier in your deposition today, you</p> <p>23 mentioned that you worked on a case involving a</p> <p>24 Whirlpool dryer?</p>	<p style="text-align: right;">141</p> <p>1 it. And, number two, I haven't had the opportunity</p> <p>2 to see the scene, or the evidence. So, to me, it</p> <p>3 appeared like it met the requirements, and the</p> <p>4 exceptions that Electrolux, itself, provided in the</p> <p>5 manual.</p> <p>6 So, we went through in Purswell's report,</p> <p>7 and it was -- according to Mr. Bills, it was over 4</p> <p>8 feet. Like I said, this stuff comes in 8-foot</p> <p>9 length. So it may have been cut to length. No</p> <p>10 one's testified -- or no one's stated whether it's</p> <p>11 been cut from 5 feet, from 8 feet, 10 feet, or</p> <p>12 whatever. So, it looks like it was cut. There was</p> <p>13 no report of kinking, or damage to it, prior to the</p> <p>14 fire. Mr. Vitale cleaned it every year. It went</p> <p>15 straight up, and out, so there was no unnecessary</p> <p>16 bends, or what have you. It was GE branded, and UL</p> <p>17 approved. It was only used as a transition duct.</p> <p>18 So it met all the exemptions, and</p> <p>19 requirements, in the manual, that I can see.</p> <p>20 Q. Do you have any opinion with regard to</p> <p>21 whether the subject dryer was maintained in</p> <p>22 accordance with Electrolux's instructions?</p> <p>23 A. I do have an opinion.</p> <p>24 Q. Okay. And, what is that opinion?</p>

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<p>1 A. Yes, and no.</p> <p>2 Q. Okay. Could you explain for me?</p> <p>3 A. Yes, because there are instructions at some</p> <p>4 point tell you to clean the lint -- the interior of</p> <p>5 the dryer. And at other points, it says to clean</p> <p>6 the vent system. So, obviously, they're cleaning</p> <p>7 the vent system every year. So, yes. But they</p> <p>8 didn't clean the interior of the dryer, so it would</p> <p>9 be no.</p> <p>10 Q. Okay.</p> <p>11 A. I do have one other opinion related to that.</p> <p>12 Q. Okay.</p> <p>13 A. And it's in the report, is that given the</p> <p>14 Vitales lay knowledge in what they did do, they did</p> <p>15 clean around the dryer; they did clean the cabinet</p> <p>16 of the dryer; and they did clean, I think, the lint</p> <p>17 screen. They may, given the lack of specificity and</p> <p>18 explicitness of the instructions, they did clean the</p> <p>19 interior of the dryer; they just didn't clean the</p> <p>20 interior of the dryer that Electrolux meant to</p> <p>21 clean.</p> <p>22 Q. And, we'll get to that part in --</p> <p>23 A. So, you know, technically, they did clean</p> <p>24 the dryer in accordance with Electrolux's</p>	<p>1 Stoddard.</p> <p>2 Q. All right. And, you would agree with me</p> <p>3 there's no way to eliminate lint from a dryer.</p> <p>4 Correct?</p> <p>5 A. That's my understanding.</p> <p>6 Q. You don't have any reason to disagree with</p> <p>7 that statement. Right?</p> <p>8 A. I don't have anything to disagree with that</p> <p>9 statement.</p> <p>10 Q. Okay. Sticking on page 9, the last</p> <p>11 paragraph, the first sentence says, "If they chose</p> <p>12 to rely upon warnings to mitigate the fire hazard</p> <p>13 associated with the use of their dryer (i.e., if</p> <p>14 design and guarding alternatives are not available</p> <p>15 or feasible), Electrolux must ensure that their</p> <p>16 warnings are effective in motivating the user to act</p> <p>17 and behave in a safe fashion."</p> <p>18 What is your basis for that statement?</p> <p>19 A. Which part of it?</p> <p>20 Q. The part that starts after the comma,</p> <p>21 "Electrolux must ensure that their warnings are</p> <p>22 effective in motivating the users to act and behave</p> <p>23 in a safe fashion."</p> <p>24 A. Yes, general chronic safety principles are</p>
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<p>1 instructions; they just didn't clean it in the way</p> <p>2 Electrolux intended. And part of the reason -- or</p> <p>3 the reason for that is because Electrolux didn't</p> <p>4 provide specific, explicit information on what needs</p> <p>5 to be cleaned.</p> <p>6 Q. Okay. If you would turn to page 9 of your</p> <p>7 report.</p> <p>8 A. Sure.</p> <p>9 Q. So on page 9, the first paragraph -- I guess</p> <p>10 it's all one sentence. Could you read for the</p> <p>11 records.</p> <p>12 A. It starts with "even though"?</p> <p>13 Q. Yes.</p> <p>14 A. "Even though they were aware that lint was</p> <p>15 accumulating in their dryers and was the number one</p> <p>16 cause of dryer fires, Carl King testified that since</p> <p>17 1988, Electrolux has failed to make any design</p> <p>18 changes to their Ball-Hitch dryers to reduce the</p> <p>19 amount of lint that accumulates in their dryers or</p> <p>20 the rate (frequency) of fires occurring with their</p> <p>21 dryers."</p> <p>22 Q. Dr. Vigilante, do you have any opinion as to</p> <p>23 what design changes Electrolux should have made?</p> <p>24 A. I'm leaving the design changes to Mr.</p>	<p>1 if a hazard is recognized, you have to eliminate</p> <p>2 your design, you have to guard it if the design</p> <p>3 change is not feasible. And if the design change</p> <p>4 and guarding is not feasible, you have to rely upon</p> <p>5 warnings. But, you have to ensure you're providing</p> <p>6 adequate warnings.</p> <p>7 If you can't provide adequate warnings, you</p> <p>8 have to consider whether or not you should be</p> <p>9 allowing the product to exist in the marketplace.</p> <p>10 Q. When you use the phrase "adequate warning",</p> <p>11 how would you define that?</p> <p>12 A. Well, again, it has to be located when and</p> <p>13 where the information is needed. It has to be</p> <p>14 conspicuous to grab the user's attention. The user</p> <p>15 has to understand what the warning is intended to</p> <p>16 communicate. The warning has to be consistent with</p> <p>17 their knowledge base, or at least provide them with</p> <p>18 new knowledge that they do have. It has to be</p> <p>19 following the warning, or heeding the warning. The</p> <p>20 user must be able to avoid the negative</p> <p>21 consequences.</p> <p>22 Part of the understanding, comprehension,</p> <p>23 conspicuousness, and so forth, is getting them to be</p> <p>24 motivated to comply.</p>



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<p style="text-align: right;">146</p> <p>1 So, again, we've got issues with cost of</p> <p>2 compliance. We've got issues with familiarity.</p> <p>3 We've got issues with prior experience, and so</p> <p>4 forth. So if you have cases where prior experience,</p> <p>5 or familiarity, is going to reduce the likelihood of</p> <p>6 somebody looking for warnings, that means you've got</p> <p>7 to make the warning more interactive, and more</p> <p>8 conspicuous.</p> <p>9 If people have a different idea of the</p> <p>10 hazards that are associated, your warning has to be</p> <p>11 specific and explicit to make sure that they</p> <p>12 understand what the hazard is, and that the hazard</p> <p>13 isn't what they preconceived it as, or what they had</p> <p>14 thought in the past.</p> <p>15 So, these are things that motivate people to</p> <p>16 comply.</p> <p>17 Q. We talked about earlier ANSI Z535.4.</p> <p>18 A. Yes.</p> <p>19 Q. So, I'd like to talk a little bit about ANSI</p> <p>20 Z21.5.1.</p> <p>21 A. Okay.</p> <p>22 Q. In conjunction with your analysis, did you</p> <p>23 compare -- and we'll break it apart. We'll start</p> <p>24 with on-product labels. Did you analyze whether the</p>	<p style="text-align: right;">148</p> <p>1 that's required by that ANSI standard was contained</p> <p>2 in the manual for the Vitales' dryer. Is that your</p> <p>3 testimony here?</p> <p>4 A. I don't know that that's true, but I don't</p> <p>5 know that -- I haven't seen any evidence to suggest</p> <p>6 that it wasn't true.</p> <p>7 Q. Do you believe that ANSI Z21.5.1 is in any</p> <p>8 way relevant to your analysis of this matter?</p> <p>9 A. It doesn't address the lint fire hazard, and</p> <p>10 it doesn't -- well, it is relevant in the fact that</p> <p>11 it doesn't preclude the manufacturer from adding</p> <p>12 additional warnings to the product, or manual. And,</p> <p>13 it doesn't preclude the manufacturer from how they</p> <p>14 format, or present, those warnings.</p> <p>15 So one of the things that Mr. Purswell</p> <p>16 stated was that ANSI Z535.4 was in conflict, and</p> <p>17 therefore not relevant. That's simply not the case.</p> <p>18 There's nothing in the other ANSI standard to</p> <p>19 preclude the use of Z535.4 from formatting or</p> <p>20 presenting warnings on the product, or in the</p> <p>21 manual.</p> <p>22 Q. If you were hired by a dryer manufacturer to</p> <p>23 create a warning for their dryer, what standard</p> <p>24 would you use?</p>
<p style="text-align: right;">147</p> <p>1 on-product labels on the Vitales' dryer complied</p> <p>2 with Z21.5.1?</p> <p>3 A. As far as I know they did.</p> <p>4 Q. Okay.</p> <p>5 A. You mean, as to what information needed to</p> <p>6 be on the product?</p> <p>7 Q. That's right.</p> <p>8 A. Yes.</p> <p>9 Q. Okay. So, you have not criticism -- you're</p> <p>10 not going to say at trial that the warnings on the</p> <p>11 dryer didn't comply with ANSI Z21.5.1?</p> <p>12 A. Yes. I believe that there's no open</p> <p>13 question as to whether or not the warnings required</p> <p>14 by that standard were on the dryer, or not.</p> <p>15 Q. Okay. Now, same line of questioning with</p> <p>16 regard to the information that was contained in the</p> <p>17 product literature.</p> <p>18 Did you perform an analysis of whether the</p> <p>19 product literature was in accord with ANSI Z21.5.1?</p> <p>20 A. I did not do an analysis because I did not</p> <p>21 see anything to suggest that the information</p> <p>22 required by that ANSI standard wasn't addressed in</p> <p>23 the manual.</p> <p>24 Q. Okay. So just to recap, all the information</p>	<p style="text-align: right;">149</p> <p>1 A. Well, I would ask them which standards are</p> <p>2 relevant to their industry. So, the UL --</p> <p>3 Q. Let's say it's a gas dryer. I should have</p> <p>4 said that.</p> <p>5 A. For example, if Electrolux called, I would</p> <p>6 ask them what industry standards are relevant to</p> <p>7 your dryer. That's where I would start from.</p> <p>8 So the ANSI standard that you mentioned,</p> <p>9 the UL2158, if Electrolux testified that that was</p> <p>10 relevant, or they utilized that. So, you would</p> <p>11 start there. You would go through, and ask them</p> <p>12 based upon their hazard analysis, what other hazards</p> <p>13 are associated with their dryer.</p> <p>14 So the standards are minimum standards.</p> <p>15 They may not have to capture all the hazards</p> <p>16 associated with it. So, the manufacturer's on the</p> <p>17 hook responsible for doing the hazard analysis. The</p> <p>18 hazard analysis is the overriding theme. Looking to</p> <p>19 see what's required in the standard is a subset of</p> <p>20 that.</p> <p>21 So, those two things I would ask them: What</p> <p>22 hazards have you identified; what standards are</p> <p>23 applicable; what warnings and standards are</p> <p>24 required, and then are there any hazards that are</p>



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<p style="text-align: right;">150</p> <p>1 not addressed in the standards, that are applicable,  2 or relevant, to your product.  3 Q. Dr. Vigilante, what methodology did you use  4 in conjunction with your analysis?  5 A. I used the scientific method.  6 Q. Okay. And, specifically, how did you use  7 the scientific method in conjunction with the case?  8 A. Well, I started with a general question  9 regarding the warnings provided with the dryer. I  10 did some -- well, I didn't have to do a lot of  11 background research because you know I've been  12 involved in these cases, and had that background  13 research already done for my hypothesis, and then I  14 did my analysis. I looked at the discovery material  15 that was available from the other cases, the State  16 Farm cases, the specific discovery information in  17 this case. I referenced the literature human  18 factors, warnings literature, product safety  19 literature, relevant. I compared with what  20 Electrolux did, and provided, what the standards,  21 guidelines, and recommendations from industry, from  22 humans factors literature, from warnings literature,  23 the ANSI standards, say should have been done, and  24 then I compared them and I found that Electrolux</p>	<p style="text-align: right;">152</p> <p>1 Occupational Health and Safety. The next one I cite  2 is the Product Safety Signs and Label System Manual  3 from the FMC Corporation. And then later on, I cite  4 the UL215 standard.  5 Q. So with regard to UL2158, did you conduct  6 analysis whether the warnings either on the product  7 or in the literature were either consistent, or  8 inconsistent with UL2158?  9 MR. HUGHES: For this particular  10 case?  11 MS. YEMMA: Yes. And, I am only  12 asking -- I realize that's the electric  13 dryer standard, but he is referring to it in  14 his report. So, I think it's a fair  15 question.  16 MR. HUGHES: With the caveat that  17 this case involves a gas dryer.  18 MS. YEMMA: Right. No question. I  19 am only referencing it because he did.  20 THE WITNESS: To clarify, Brian  21 Ripley, and Carl King, testified --  22 BY MS. YEMMA:  23 Q. I understand.  24 A. -- that they used the UL2158 standard for</p>
<p style="text-align: right;">151</p> <p>1 fell short of those requirements, and came to my  2 opinions.  3 Q. So the general question that you started  4 with, what was that question?  5 A. The general question is whether or not  6 Electrolux provides adequate warning with their  7 dryers.  8 Q. Okay. If you could turn to page 10 of your  9 report.  10 A. Sure.  11 Q. Under the Section E.1.1.  12 A. Okay.  13 Q. So the fourth paragraph that starts out  14 "Contrary to contemporary industry standards and  15 recommendations." So my question simply is what you  16 were referring to "contemporary industry standards  17 and recommendations", what are you referring to?  18 A. Well, they're in the analysis right under  19 that. So, for example, the first one I cite is ANSI  20 Z535.4. The second one I cite is the book chapter  21 from Wogalter and Leonard in the textbook Warnings  22 and Risk Perception. The next one I cite is the  23 Human Factors Design Handbook. The next one I cite  24 is a peer-reviewed article in the journal,</p>	<p style="text-align: right;">153</p> <p>1 the design of both their electric and gas dryer  2 warnings. So, Ripley and King testified to that. I  3 didn't testify to that. I'm just repeating what  4 they said, and relying upon what they said.  5 So, number two, I did not go through UL2158,  6 and see if all the warnings they required were on  7 the dryer.  8 What I did note is that UL2158, Section  9 7.1.13 requires "A cautionary marking intended to  10 instruct the operator shall be legible and visible  11 to the operator during normal operation of the  12 appliance. A marking giving service instructions  13 shall be legible and visible when servicing is  14 performed."  15 So these are under the section regarding  16 on-product markings, labeling, and warnings in  17 UL2158.  18 So my opinion is, is that they failed --  19 Electrolux failed to meet that requirement because  20 the servicing, the 18-month servicing, or 12-month  21 servicing, information is not on the dryer of the  22 cautionary marking intended to instruct the operator  23 of the number one hazard associated with the  24 operation of the dryer was not on the dryer.</p>

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<p style="text-align: right;">154</p> <p>1 Therefore, they were -- Electrolux didn't</p> <p>2 provide the information on the dryer as the human</p> <p>3 factors literature, the warnings literature, product</p> <p>4 safety literature, and the product safety standards,</p> <p>5 or the product warning standards, stated should be</p> <p>6 on the product. I'm saying that that's consistent</p> <p>7 went the UL requirement that cautionary markings be</p> <p>8 on the product where it's visible and legible during</p> <p>9 normal operation and/or servicing.</p> <p>10 Q. Okay. Moving ahead to page 15 of your</p> <p>11 report, and I'll wait till you get there.</p> <p>12 A. Okay.</p> <p>13 Q. So, on that first paragraph -- it's not a</p> <p>14 full paragraph -- but the last sentence where it</p> <p>15 starts out "Given their experience", do you see</p> <p>16 that?</p> <p>17 A. I got it. Okay.</p> <p>18 Q. "Given their experience and familiarity with</p> <p>19 dryers, it was foreseeable to Electrolux that many</p> <p>20 professional installers would not have a need or</p> <p>21 desire to consult the manual while installing the</p> <p>22 dryer." And, then you have three cites, too.</p> <p>23 And, I have not read the articles that you</p> <p>24 cited, but I'm curious as to what you'll testify at</p>	<p style="text-align: right;">156</p> <p>1 A. Sure. Illustration 1 assumes that</p> <p>2 Electrolux provides the indicator light, and either</p> <p>3 cycle counter and/or airflow monitor, that Mike</p> <p>4 Stoddard opined about.</p> <p>5 Q. So one, or the other?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. Go ahead.</p> <p>8 A. So that would be presented on the top, or</p> <p>9 near the top console near the light, near the</p> <p>10 service indicator light -- the indicator light.</p> <p>11 And Illustration 1 would be repeated in the</p> <p>12 manual. In the -- well, this one is only an</p> <p>13 operator -- sorry -- the Owner's Manual and</p> <p>14 Installation Instructions Manual.</p> <p>15 And then in conjunction with Illustration 1</p> <p>16 in the manual is my opinion that they should have</p> <p>17 provided Illustration 2, along with text to describe</p> <p>18 what and where the dryer needed to be, this symbol</p> <p>19 on cleaning.</p> <p>20 So Illustration 2, I think, is -- I took</p> <p>21 that from an Electrolux Service Manual, and it is my</p> <p>22 opinion that it should be copied and placed in the</p> <p>23 manual with Illustration 1, with accompanied text to</p> <p>24 explain what and where it needed to be cleaned, and</p>
<p style="text-align: right;">155</p> <p>1 trial is your support for that statement?</p> <p>2 A. Well, I think a couple things. (1) are the</p> <p>3 citations that I cited; (2) is King's testimony that</p> <p>4 they are aware that the installers were not using</p> <p>5 the manuals to install the dryers.</p> <p>6 Q. I want to talk next about your criticism of</p> <p>7 the language "interior of the machine" on page 21.</p> <p>8 A. Okay.</p> <p>9 Q. So that first sentence says -- and I'm on</p> <p>10 the last paragraph of page 21, "Within their manual,</p> <p>11 Electrolux intends the phrases 'interior of the</p> <p>12 machine' and 'from the dryer' to mean all areas</p> <p>13 inside the cabinet of the dryer: under, above,</p> <p>14 behind, around the drum; top of motor; heater</p> <p>15 housing; and baffle." And, you're citing Carl</p> <p>16 King's testimony.</p> <p>17 In your opinion, what language would be more</p> <p>18 explicit, or appropriate, per the standard?</p> <p>19 A. It's in my report in Section E3.</p> <p>20 Q. And, you're looking on Page 31?</p> <p>21 A. Yes, ma'am.</p> <p>22 Q. Okay. So on Page 31, there are two</p> <p>23 illustrations. Can you tell us about those, and</p> <p>24 we'll start with the first one?</p>	<p style="text-align: right;">157</p> <p>1 inspected.</p> <p>2 And, that's the bottom paragraph on page 30</p> <p>3 is what I'm suggesting should be in there.</p> <p>4 Q. So with regard to Illustration 1, do you</p> <p>5 have an opinion as to what size the label should be?</p> <p>6 A. I do, and it's going to depend upon where on</p> <p>7 the console it's placed.</p> <p>8 Q. Okay. That makes sense.</p> <p>9 A. Yes. So, it depends on how they place it on</p> <p>10 the console. So you can either put it on the</p> <p>11 console, or you can put it on the top of the dryer</p> <p>12 underneath the console not directly underneath the</p> <p>13 light because the console on this dryer is a</p> <p>14 vertical surface that's perpendicular to the top of</p> <p>15 the dryer.</p> <p>16 So, depending upon the real estate on the</p> <p>17 console, they can put it next to the light, or they</p> <p>18 can put it on the top of the dryer adjacent to the</p> <p>19 console under the light.</p> <p>20 Q. So the second option you just described,</p> <p>21 that would be for -- the console can either be at</p> <p>22 the, I would describe it, at the rear, or on the</p> <p>23 front of the dryer?</p> <p>24 A. They can, but the issue is that Electrolux</p>

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<p style="text-align: right;">158</p> <p>1 uses different console designs. So some of them are  2 more cluttered than others. So it just depends on  3 where they put the light, and how cluttered with  4 other indicator lights, and dials, and whatnot, are  5 displayed there are on the console.  6 Q. Okay. So the size of the label would be  7 dependent on the type of console, and the available  8 real estate on the console?  9 A. Yes. But, the minimum is an 8 point font  10 for the text message. And, this is bigger than 8  11 point font.  12 Q. Okay. That was my next question.  13 So, 8 point font for everything below the  14 red banner?  15 A. Yes.  16 Q. And then how about -- sorry. The 8 point  17 font, is that dictated by ANSI, by the 535.4, or --  18 A. Generally, 8 point font is the smallest  19 unless there's a space constraint, and that's  20 assuming a two -- I think a two or a three foot  21 viewing range. So standing in front of the dryer,  22 but when you're using the console, you're going to  23 be closer so you would be within that two-foot  24 range.</p>	<p style="text-align: right;">160</p> <p>1 A. The warning that I created is based upon the  2 ANSI Z535.4 standard, and the warnings in human  3 factors literature, all of which have been provided  4 based upon testing that shows that these things make  5 warnings noticeable, understandable, and motivate  6 people to respond.  7 Illustration 2 is the pictograph that  8 Electrolux uses, so I would assume that it would be  9 effective. If it's not effective then, of course,  10 it needs to change. And, what Electrolux is  11 currently providing is not effective.  12 Q. Okay. Earlier in your testimony, we talked  13 about when you were at IBM, and you did the  14 usability studies, and the focus groups.  15 Have you done anything like that to support  16 that the warning in Illustration 1 is something a  17 consumer would follow if it was on their dryer in  18 the manner in which you proposed?  19 A. Yes. What I testified earlier was that  20 there are multiple tools in the bag for the human  21 factors expert to do usability testing, and  22 assessment. And, one of them was a heuristic  23 evaluation. And, I did conduct that on this  24 warning, and I conducted it on the warning and</p>
<p style="text-align: right;">159</p> <p>1 If there were significant space constraints,  2 ANSI allows you to go down to 6 point font. But, my  3 research has shown that, particularly with elderly  4 people, which are not excluded from using this  5 dryer, you don't want to go below 8 point font.  6 Q. Okay. With regard to the Illustration 2,  7 this would be contained in the owner's guide, or the  8 installation instructions?  9 A. Well, see, in this case, there's only one  10 manual. In other cases, there's an install, and an  11 owner's guide, and user and care guide. So this  12 would be in this manual, one manual.  13 Q. How many times would it appear?  14 A. Well, certainly it needs to appear in the  15 front of the manual, in the beginning. It can be  16 incorporated into the care and cleaning section so  17 it's redundant.  18 Q. When you say in the front, do you mean on  19 the first page, like the cover?  20 A. Not necessarily the cover, but either the  21 cover of page 2 where the gas warning is.  22 Q. And, what support do you have that the label  23 you're proposing both in Illustrations 1 and 2 would  24 be followed?</p>	<p style="text-align: right;">161</p> <p>1 instructions and materials that Electrolux provided.  2 Q. How did you conduct the heuristic  3 evaluation?  4 A. It's based upon taking my skills in the  5 field of human factors, or ergonomics and warnings,  6 and looking up the relevant literature, the relevant  7 standards, to see whether or not Electrolux met  8 those standards, those guidelines, and those  9 recommendations and principles. And, of course,  10 based upon that analysis, I show that they didn't.  11 And then second, I design my warning based  12 upon the relevant standards, literature, guidelines  13 and principles. And those standards, guidelines,  14 literature, and principles show that when you design  15 warnings like this, they are, in fact, effective.  16 Q. So apart from what you just said in terms of  17 establishing that this warning would be effective in  18 moving the behavior of consumers to do what the  19 warning actually says, have you done anything, like  20 by holding a focus group, or anything of that  21 nature, to support that the warning would be  22 followed and would motivate the user?  23 A. Right. I did the heuristic testing. And  24 the same standards, literature, principles that I</p>

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<p>1 used to design this warning, I used in the design of  2 other warnings when I was with the IBM Corporation,  3 and did that validation testing, and showed that  4 people are more likely than not going to comply with  5 the warning.  6 So, there's nothing to indicate that this  7 warning would be inconsistent with all those other  8 warnings that I had the opportunity to do individual  9 testing on.  10 Q. Okay. If we can turn to page 32 --  11 A. And, I want to say, too, that the  12 Illustration 1 is associated with the service  13 indicator light.  14 If the service indicator light is not  15 followed, the dryer shuts down forcing the call.  16 So, it's a much more effective warning. It's a  17 warning in conjunction with an active safeguard so  18 you're not depending upon the warning solely. So  19 we're going to get to the next illustration that  20 depends upon the warning solely.  21 So, certainly Illustration 1 is a much  22 stronger warning to get people to comply.  23 Essentially, the warning in Illustration 1 is giving  24 folks a heads-up that this light is going to come</p>	<p>1 could you -- the door is square -- can we agree on  2 that?  3 A. Yes.  4 Q. Okay. So where on the door would you  5 propose that the label be placed?  6 A. Well, certainly, if you're not going to  7 center it, which you can, I would put it -- if  8 you're not going to center it, I would set it on the  9 handle side of the door.  10 Q. Okay. So, near the handle?  11 A. Yes. The only problem, of course, is if  12 it's a reversible door.  13 Q. Right.  14 A. So, then you put it on top of the dryer  15 cabinet.  16 Q. Okay. So when you say on top of the dryer  17 cabinet, if we refer to the top of the dryer, again,  18 as a square --  19 A. Mm-hmm.  20 Q. -- where on that square would you put the  21 label?  22 A. I think that you would center it. If you  23 weren't going to center it, you would either bring  24 it closer to the front edge, or closer to the</p>
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<p>1 on. When it comes on, you need to get it cleaned;  2 otherwise, it's going to shut down. And then when  3 it shuts down, the warning tells you why it shut  4 down.  5 Q. Okay. So then turning to Illustration 3,  6 that you have captioned "Alternative Front Console  7 Warning."  8 A. Yes.  9 Q. Tell me about what do you propose for this  10 warning, where on the console?  11 A. This one needs to be on the top of the  12 dryer, and/or the front of the drum.  13 Q. So, you're proposing this warning without  14 the indicator light. Is that right?  15 A. Yes. Illustration 3 is if Electrolux  16 chooses not to provide the available safeguard, the  17 very least they could have done was provided a  18 conspicuous, explicit and specific on-product  19 warning that was readily visible at all times,  20 either on the front of the drum -- drum door, I  21 should say -- the front of the drum door, or the top  22 of the dryer cabinet.  23 Q. Okay. So the front of the drum door, I  24 think I know what you're talking about, but</p>	<p>1 console, but I wouldn't move it off to the left, or  2 to the right. And, I think --  3 Q. And, the reason being that?  4 A. Well, I think that's just a better spot, but  5 I don't think it's going to make that big of a  6 difference if it's a little bit more to the left  7 than to the right.  8 Q. And, then in terms of the size of the label?  9 A. At least what's in my report.  10 Q. Okay. And, what font did you use for  11 Illustration 3 for the text?  12 A. I think the text is 14-inch -- or 14 point.  13 Q. And, then where it says "warning" in red,  14 that seems to be a little bigger font?  15 A. It's orange.  16 Q. I'm sorry.  17 A. That's okay. I think it's the printer.  18 With respect to that, ANSI Z535.4 calls out  19 the specific color for that signal word panel. So,  20 it's called safety orange.  21 Q. All right. So safety orange where the  22 warning appears, what size is that?  23 A. That's at least -- I tend to like it at  24 least double the size of the message text. But, the</p>

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<p style="text-align: right;">166</p> <p>1 standard allows it to be 50 percent bigger than the  2 message text.  3 Q. So in your Illustration 3, is it 28 point  4 font.  5 A. About that, yes.  6 Q. Okay. Dr. Vigilante, I know we talked about  7 this with regard to Illustrations 1 and 2, but with  8 regard to number 3, did you conduct any analysis, or  9 do you have any data to support that a consumer  10 would comply with the warning in Illustration 3 as  11 it's proposed?  12 A. Yes. We did an heuristic evaluation to  13 ensure that it met the minimum standards related to  14 product safety signs and labels, human factors  15 literature, and the warnings literature.  16 Q. With regard to Illustration 4, this is a  17 warning you are proposing to be on the rear of the  18 cabinet. Is that correct?  19 A. Yes.  20 Q. Okay. And, are you proposing that  21 Illustration 3 and 4 would be used together?  22 A. On the rear of the cabinet?  23 Q. No. I meant used on the same dryer?  24 A. Yeah. They're two different issues.</p>	<p style="text-align: right;">168</p> <p>1 as it's represented in your report?  2 A. As long as it's 8 point font. This looks  3 like it's 10 point font. So it could be 10; it  4 could be 8.  5 Q. Okay. With regard to that heading Warning  6 in the safety orange at 28 point font, or --  7 A. Well, it would be at least double. I prefer  8 double. Standard allows 50 percent more.  9 Q. Okay.  10 MR. HUGHES: Let's take a  11 five-minute break.  12 (Brief recess.)  13 BY MS. YEMMA:  14 Q. I wanted to ask you in conjunction with your  15 analysis in this matter, and I don't think I asked  16 this before, but did you look at on-product labels,  17 or product literature, from other dryer  18 manufacturers other than Electrolux?  19 A. We talked about that. I don't think I did  20 anything specific for this case except for the  21 Fisher Paykel, and the Whirlpool indicator light.  22 Q. Okay. So, are you aware if any dryer  23 manufacturer, not including Electrolux, puts on an  24 on-product warning, those cleaning requirements?</p>
<p style="text-align: right;">167</p> <p>1 They're related, but they're two different issues.  2 Right?  3 Q. Right, I understand. I just to make sure I  4 understood correctly.  5 A. But, just to clarify, number 4 is going to  6 be used with either number 1 or number 3. So,  7 number 1 and number 3 are the alternative based upon  8 whether or not there's a cycle counter, airflow  9 monitor, or indicator light.  10 2 and 4 are always going to be used because  11 2 goes in the manual --  12 Q. Right.  13 A. -- to describe where it needs to be cleaned  14 after you tell them it needs to be cleaned.  15 And, 4 is going to be in the manual, and  16 it's going to be on the back of the dryer. So that  17 when the installer, who doesn't read the manual,  18 will get the warning.  19 Q. And, where on the rear of the dryer do you  20 propose that Illustration 4 be?  21 A. Adjacent to the exhaust opening.  22 Q. So, above, on the side?  23 A. It doesn't matter to me.  24 Q. Okay. And, the size of the warning would be</p>	<p style="text-align: right;">169</p> <p>1 A. I don't recall any offhand other than the  2 Laundry Center.  3 Q. Well, the Laundry Center that Electrolux  4 makes?  5 A. Yes. I'm sorry.  6 Q. Okay. But for other dryer manufacturers,  7 are you aware of any dryer manufacturer that puts a  8 label on the product that instructs the user to have  9 the dryer cleaned?  10 A. Yes, I don't recall another label -- another  11 manufacturer that has to do that. While I don't  12 recall another example of a manufacturer that does  13 that, but I don't know that the other manufacturers  14 have to do that.  15 Q. Why is that?  16 A. They have different designs. They have  17 different hazards associated with them.  18 Again, the issue with this dryer, as Carl  19 King testified, is that the lint fire is the  20 greatest hazard and most likely fire scenario  21 associated with this dryer. It's not like it's the  22 least likely thing they're going to see with this  23 dryer. It's the most critical hazard associated  24 with this dryer, according to Mr. King.</p>



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<p style="text-align: right;">170</p> <p>1 So another manufacturer that's manufacturing</p> <p>2 a bulkhead, where it's not that significant of an</p> <p>3 issue, you know, they may not have to put it on the</p> <p>4 dryer.</p> <p>5 Q. Okay. If you could turn to page 26 of your</p> <p>6 report.</p> <p>7 A. Okay.</p> <p>8 Q. So on page 26, the third paragraph, in the</p> <p>9 middle of the paragraph where it starts at "it is</p> <p>10 common," do you see that?</p> <p>11 A. Okay.</p> <p>12 Q. Okay, and I'll read it. "It is common for</p> <p>13 products and appliance manufacturers, such as</p> <p>14 Whirlpool, to assess the usability of their</p> <p>15 products, including dryers, and the efficacy of</p> <p>16 their product warnings and instructions."</p> <p>17 Did I read that correctly?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. So, what is your basis for that</p> <p>20 statement?</p> <p>21 A. Well, (a), it's talked about in the products</p> <p>22 safety management textbooks. It's talked about in</p> <p>23 the -- it's taught in the human factors and product</p> <p>24 safety classes. It's been my experience at IBM that</p>	<p style="text-align: right;">172</p> <p>1 Whirlpool?</p> <p>2 A. For Whirlpool, specifically?</p> <p>3 Q. For Whirlpool, specifically?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. Are you aware of what any other dryer</p> <p>6 manufacturers do with regard to developing warnings?</p> <p>7 A. I know what Electrolux does.</p> <p>8 Q. Okay. Apart from Electrolux. So, apart</p> <p>9 from Electrolux, do you know what other dryer</p> <p>10 manufacturers -- and I'm going to be more</p> <p>11 specific -- back in the timeframe of 2003-2004?</p> <p>12 A. Yes, I wasn't researching -- well, that's</p> <p>13 not true. I think I had a Whirlpool case back in</p> <p>14 2004-2005, maybe 2006, timeframe. But, I didn't do</p> <p>15 a project back in that timeframe to determine what</p> <p>16 other manufacturers were doing, other dryer</p> <p>17 manufacturers were doing.</p> <p>18 Q. So in the Whirlpool case -- and we've talked</p> <p>19 about it a couple of times -- but to your</p> <p>20 understanding, the fire, or the alleged fire,</p> <p>21 started from spontaneous combustion?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. And, do you know what specifically --</p> <p>24 were they drying materials soaked in flammable</p>
<p style="text-align: right;">171</p> <p>1 these are the types of activities that we did with</p> <p>2 regard to warnings, instructions, and usability.</p> <p>3 There's a whole industry of human factors</p> <p>4 professionals, such as myself, that get hired by</p> <p>5 companies to do this exact thing.</p> <p>6 And then specifically with respect to</p> <p>7 Whirlpool, I know that Whirlpool, several years ago,</p> <p>8 submitted their new washer/dryer combo in the</p> <p>9 usability -- the user center design process they put</p> <p>10 in place to design it into the competition at the</p> <p>11 Human Factors and Ergonomics Society Annual</p> <p>12 Conference. We do a -- under the Product Technical</p> <p>13 Group, we do a User Center Design Award each year</p> <p>14 where manufactures submit their product, and they</p> <p>15 detail the usability in human factors related</p> <p>16 activities they did during the design process for</p> <p>17 that product to ensure ease of use, safety and</p> <p>18 comfort.</p> <p>19 So, I've been sitting on that award team</p> <p>20 maybe half the last 10 years, or so. So, I've seen</p> <p>21 each year there's about a dozen submissions of</p> <p>22 manufacturers that submit their products.</p> <p>23 Q. So it's knowledge you learned -- with regard</p> <p>24 to sitting on that award team -- concerning</p>	<p style="text-align: right;">173</p> <p>1 liquids? Do you know what the underlying facts were</p> <p>2 that brought about the spontaneous combustion?</p> <p>3 A. I'm not 100 percent sure, but I would think</p> <p>4 it was more cooking oils and, say, for example,</p> <p>5 jeans soaked in gasoline, or something like that.</p> <p>6 Q. So, cooking oil, and towels from the</p> <p>7 kitchen, or --</p> <p>8 A. It's probably more likely than, like I said,</p> <p>9 move coveralls covered in oil and grease.</p> <p>10 Q. Okay. And, you don't recall specifically</p> <p>11 whether you were looking at an on-product warning,</p> <p>12 or what was in the literature; is that right?</p> <p>13 A. I don't recall.</p> <p>14 Q. Was that a subrogation case, if you know?</p> <p>15 A. I believe so.</p> <p>16 Q. And, it was in Virginia?</p> <p>17 A. That one, I don't think so.</p> <p>18 Q. Okay. I may be misremembering.</p> <p>19 Do you remember where it was pending?</p> <p>20 A. I'm pretty sure the client was one of the</p> <p>21 several attorneys for Cozen, O'Connor down in</p> <p>22 Atlanta. But I think the defense attorney, for</p> <p>23 whatever reason, was out, like, the Chicago area. I</p> <p>24 don't know why that's coming to mind, but...</p>



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<p style="text-align: right;">174</p> <p>1 Q. All right.</p> <p>2 A. And I remember the defense expert, the</p> <p>3 defense human factors expert, was out of California.</p> <p>4 Q. Okay. If you could turn to page 29, please.</p> <p>5 A. Okay.</p> <p>6 Q. You referenced Mike Stoddard, and his</p> <p>7 conclusion with regard to the indicator light. And,</p> <p>8 I'm curious as to whether you have any information</p> <p>9 regarding compliance rates by consumers with</p> <p>10 products that have indicator lights?</p> <p>11 A. How so?</p> <p>12 Q. In terms of if an indicator light comes on,</p> <p>13 whether consumers do something in response to that?</p> <p>14 A. I believe they do.</p> <p>15 Q. Okay. And, have you conducted any studies</p> <p>16 to support that they do, or can you reference any</p> <p>17 studies that would support --</p> <p>18 A. I used to design products that had indicator</p> <p>19 lights, and I used them to alert and inform users of</p> <p>20 different states, and when the state occurred, they</p> <p>21 would have to do different things.</p> <p>22 Q. What products were those?</p> <p>23 A. Anything from scanners, tape libraries,</p> <p>24 monitors, keyboards, laptops, storage base systems,</p>	<p style="text-align: right;">176</p> <p>1 light signify that the user had to do something</p> <p>2 affirmatively with regard to the product?</p> <p>3 A. Most of them do because it tells you what</p> <p>4 state the system's in, and if you want to change the</p> <p>5 state, you would have to do something affirmatively</p> <p>6 with the product. So --</p> <p>7 Q. Okay. But what about something -- I'm</p> <p>8 sorry, go ahead.</p> <p>9 A. For example, my laptop, the screen is</p> <p>10 asleep, I believe. If the unit was sleeping, you</p> <p>11 would have an indicator light that slowly bleeps to</p> <p>12 let you know that it's sleeping. So, you wake it</p> <p>13 up. If you don't know that it's sleeping, you may</p> <p>14 assume it's off, and then hit the button to turn it</p> <p>15 on, which means you're going to reboot the system,</p> <p>16 which you didn't have to do.</p> <p>17 So indicator lights give a state to the</p> <p>18 system, and then if you want that state to change,</p> <p>19 whether it's good, bad or indifferent, you have to</p> <p>20 actively do something to get it changed.</p> <p>21 Q. Okay. If you could turn to page 36, please.</p> <p>22 A. Okay.</p> <p>23 Q. In the -- I guess the second paragraph where</p> <p>24 it starts out "based upon". Do you see that?</p>
<p style="text-align: right;">175</p> <p>1 wireless cards.</p> <p>2 I mean, indicator lights are fairly commonly</p> <p>3 used. It's kind of like how do we know people</p> <p>4 breathe oxygen. It's just -- it's that common.</p> <p>5 The reason they're used is they have certain</p> <p>6 benefits. They are more of an active warning. So,</p> <p>7 they're more likely to capture your attention. So a</p> <p>8 light flashing on your dryer is going to capture</p> <p>9 your attention more so than a static warning that</p> <p>10 doesn't grab your attention as much.</p> <p>11 So, they're precariously used in product</p> <p>12 design, and an appliance design.</p> <p>13 Q. So in a scanner, for example, what would the</p> <p>14 indicator light be used for?</p> <p>15 A. Well, typically, it would be for indicating</p> <p>16 power on so that you don't try to turn it off when</p> <p>17 it's on, and turn it on when it's off, to let you</p> <p>18 know that the scanner is actually running so you</p> <p>19 don't hit the scan button again.</p> <p>20 So it could be an error, that you want to</p> <p>21 flash rapidly, to let the user know there's</p> <p>22 something wrong with scanner.</p> <p>23 Q. In any of the products that you just</p> <p>24 identified, that had the indicator light, would the</p>	<p style="text-align: right;">177</p> <p>1 A. Okay.</p> <p>2 Q. In that sentence, you refer to Emil and</p> <p>3 Sharon Cloud, and I just wanted to confirm that's</p> <p>4 just a typo.</p> <p>5 A. That's a typo. I apologize.</p> <p>6 Q. No, no, that's okay. I just wanted to point</p> <p>7 that out because the other correction you made was</p> <p>8 actually at the bottom of that page.</p> <p>9 A. Yes.</p> <p>10 Q. And, I just noticed that, too. I assume</p> <p>11 that should say Ursy and Joseph Vitale?</p> <p>12 A. Yes, ma'am.</p> <p>13 Q. Okay. So if you turn to page 38 under the</p> <p>14 section after "Findings".</p> <p>15 A. Okay.</p> <p>16 Q. I know we talked a lot about your opinions</p> <p>17 throughout the deposition, but I'd just like to run</p> <p>18 through and make sure I understand what your bases</p> <p>19 are.</p> <p>20 A. Sure.</p> <p>21 Q. Okay. So --</p> <p>22 A. If I can make a statement that the basis for</p> <p>23 them is everything in the analysis. So, they</p> <p>24 usually follow a section of analysis to make an</p>

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<p style="text-align: right;">178</p> <p>1 opinion. So if I missed anything, I don't want to 2 be precluded from pointing back to the analysis to 3 say everything I meant to say is in the analysis 4 section. 5 Q. Okay. So with that explanation -- okay, and 6 I think that's absolutely fair. 7 Okay. So, Finding No. 1: "Electrolux's 8 yearly cleaning and exhaust duct recommendations 9 failed to comply with the standard of care for the 10 design and development of product safety warnings 11 used to communicate critical safety information to 12 product users and installers." 13 What is your basis for that opinion? 14 A. I'm sure it's multifaceted. So, number one, 15 it wasn't on the product. Number two, the manner in 16 which it was presented in the manuals is inadequate 17 and inappropriate. So, that's kind of a general 18 reasons why. 19 Q. Okay. And how about No. 2, and I'll just 20 read it: "Electrolux was aware that installers and 21 users of their dryers were not reading the written 22 material they provided with the dryer, were only 23 reading parts of the accompanying material, and/or 24 did not have the material available when</p>	<p style="text-align: right;">180</p> <p>1 So if you put those two in conjunction with 2 the fact that it's the greatest hazard associated 3 with the product, then that's how I come to my 4 opinion. 5 Q. Anything else? 6 A. Whatever is in the analysis. 7 Q. Okay. So Opinion 4: "Electrolux should 8 have conspicuously and permanently placed the 9 warnings directly on the dryer and the dryer was 10 defective and reasonably dangerous without them." 11 A. Yes. 12 Q. What's your basis for that opinion? 13 A. The standard of care for the industry, the 14 standards related to product safety, signs, and 15 labels, the human factors literature, the warnings 16 literature, the fact that it's the greatest hazard. 17 The fact that Electrolux is aware that most people 18 are using flexible foil ducting, and that most 19 people are not cleaning the interior of their dryer. 20 And, that they are aware that most people are not 21 getting the manuals, reading the manuals, and/or not 22 reading all of the manual. 23 Q. Okay. Opinion 5: "Electrolux failed to 24 provide effective warnings in their manuals</p>
<p style="text-align: right;">179</p> <p>1 installation and/or using the dryer." 2 What's your basis for Opinion No. 2? 3 A. I believe most of it comes from Carl King's 4 testimony. I go through that on pages 13 and 14 of 5 the report, and I reference Carl King, Carl King's 6 multiple depositions, as the designee for 7 Electrolux. 8 Q. Turning to Opinion 3: "It was not 9 reasonable for Electrolux to rely solely upon the 10 use of manuals and a checklist to warn installers 11 and users that the incident dryer needed to be 12 cleaned at least once a year, that flexible foil 13 venting should not be used, and lint buildup near 14 the heat source and a fire can result if these 15 instructions are not followed." 16 What's your basis for that opinion? 17 A. Well, if you look at Findings 1 and 2, it's 18 cumulative. Right? So, they failed to comply with 19 the standard of care from the design, development 20 and product safety warning. Electrolux was aware 21 that their installers and users were not reading the 22 material, were only reading parts of it, and/or did 23 not have it available in installing and using the 24 dryer.</p>	<p style="text-align: right;">181</p> <p>1 regarding the lint fire hazard, the prohibition from 2 using flexible foil ducting, and the requirement to 3 have the interior of the dryer and exhaust cleaned 4 every year." 5 What's your basis for that opinion? 6 A. Again, all the standards, the literature, 7 the guidelines, the recommendations, all state you 8 should provide conspicuous noticeable warnings. 9 They should be prominently placed in the manual. 10 They should be explicit. They should be specific. 11 The should -- following the warning should prevent 12 the hazard. 13 And, in comparison, the warnings that 14 Electrolux put in the manual regarding this hazard 15 were not prominently placed, were not conspicuously 16 presented, were not explicit, were not specific, and 17 following the warnings may not prevent the fire. 18 Q. And No. 6 is cumulative, it appears, in your 19 opinion: So, "Electrolux should have provided 20 prominently placed, conspicuous, legible, explicit 21 and specific warnings in their dryer manuals and the 22 dryer was defective and unreasonable dangerous 23 without them." 24 A. Exactly.</p>

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<p style="text-align: right;">182</p> <p>1 Q. Okay. And, the basis for that opinion is?</p> <p>2 A. They didn't do it. The standards, the</p> <p>3 guidelines, the recommendations, and so forth, say</p> <p>4 this is how you deal with critical safety related</p> <p>5 information. So by not providing the conspicuous,</p> <p>6 prominently placed, legible, explicit, specific, it</p> <p>7 failed to meet the standard of care. It rendered it</p> <p>8 defective and unreasonably dangerous.</p> <p>9 Q. Okay. Opinion 7: "Electrolux failed to</p> <p>10 provide an adequate warning system, which included</p> <p>11 conspicuous and explicit on-product warnings, which</p> <p>12 met contemporary industry standards, guidelines, and</p> <p>13 practices regarding the lint fire hazard associated</p> <p>14 with the improper maintenance and installation of</p> <p>15 the dryer."</p> <p>16 And, what is your basis for that opinion?</p> <p>17 A. The first six opinions are all building to</p> <p>18 that one. So, we went through the fact that it's</p> <p>19 the greatest fire hazard. They were aware that</p> <p>20 people weren't reading the manuals, getting the</p> <p>21 manuals, or reading all the manuals.</p> <p>22 The standards say it needs to be on the</p> <p>23 product. The warnings in their manual were</p> <p>24 inadequate, and they should have provided them on</p>	<p style="text-align: right;">184</p> <p>1 Electrolux's failure to provide an adequate warning</p> <p>2 system, that included the on-product warning,</p> <p>3 deprived them of that information. And, that</p> <p>4 information was absolutely critical for the safe use</p> <p>5 of the product.</p> <p>6 Q. Okay. Jumping ahead to 11: "Electrolux's</p> <p>7 failure to assess the efficacy of their warnings and</p> <p>8 instructions was improper, unreasonably dangerous,</p> <p>9 contrary to common industry practices, and was a</p> <p>10 cause of the fire."</p> <p>11 A. Yes.</p> <p>12 Q. What's your basis for that opinion?</p> <p>13 A. Well, most of it -- well, there's two parts,</p> <p>14 I guess. One is the testimony of King, Ripley,</p> <p>15 Ricklefs, that I cited in the analysis.</p> <p>16 And two, the proper thing to do from a</p> <p>17 product design standpoint is to assess your product</p> <p>18 both prelaunch and after launch, and then if you</p> <p>19 identify problems in either state, pre or post</p> <p>20 launch, to change the product design and/or the</p> <p>21 warnings so that you get the performance that you</p> <p>22 want.</p> <p>23 So, I'm assuming that Electrolux didn't want</p> <p>24 to burn people's houses down, so they should have</p>
<p style="text-align: right;">183</p> <p>1 the product. They should have provided them in the</p> <p>2 manual prominently, conspicuously, et cetera.</p> <p>3 Therefore, they failed to provide an adequate</p> <p>4 warning system that met those standards, guidelines,</p> <p>5 and practices. And, their actions failing to do</p> <p>6 that was improper. I think that get -- I mean</p> <p>7 Opinion 8 is just a continuation of it.</p> <p>8 Q. Okay. Then jumping to No. 9: "Electrolux's</p> <p>9 failure to provide an adequate warning system</p> <p>10 regarding the lint buildup fire hazard deprived</p> <p>11 Joseph and Ursy Vitale of critical safety</p> <p>12 information they needed to safely use the dryer."</p> <p>13 What's your basis for that opinion?</p> <p>14 A. Well, they failed to provide an adequate</p> <p>15 warning system, and Joseph and Ursy Vitale testified</p> <p>16 that they were not aware that lint could build up --</p> <p>17 I should say Joseph and/or Ursy Vitale testified</p> <p>18 that they were not aware that lint could build up</p> <p>19 behind the drum, or near the heat source, and create</p> <p>20 a fire hazard. They were not aware of the need to</p> <p>21 have the dryer cleaned professionally every year to</p> <p>22 prevent a dryer fire.</p> <p>23 So, Electrolux's failure to provide an</p> <p>24 adequate on-product warning -- or I should say</p>	<p style="text-align: right;">185</p> <p>1 been fixing their warnings and instructions because</p> <p>2 they knew they weren't effective.</p> <p>3 Carl King testified that most of the fires</p> <p>4 he investigates, the dryer hasn't been cleaned. And</p> <p>5 most of the dryer fires, Electrolux is aware most of</p> <p>6 their users or installers are using flexible foil</p> <p>7 venting to install the dryers. They knew it. They</p> <p>8 either testified to it, or it was in their material.</p> <p>9 But, yet, they did nothing to assess how effective</p> <p>10 their warnings were.</p> <p>11 Ripley, Ricklefs, King, were all responsible</p> <p>12 for product design, and none of them were aware of</p> <p>13 any testing, any user testing, any testing.</p> <p>14 Bringing in the human factors consultant, looking at</p> <p>15 the service data to figure out, maybe, the warnings</p> <p>16 needed to be changed, or updated. They did nothing.</p> <p>17 They did absolutely nothing. And, that's improper.</p> <p>18 And because they did nothing to assess them,</p> <p>19 they didn't change them. And because they didn't</p> <p>20 change them, they continued to provide inadequate</p> <p>21 warnings, and the inadequate warnings was a cause of</p> <p>22 the fire.</p> <p>23 Q. Okay. Opinion 12: "Electrolux's failure to</p> <p>24 exercise reasonable diligence in the use of their</p>

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<p style="text-align: right;">186</p> <p>1 service, warranty, and claims data to assess and  2 improve the effectiveness of their product warnings  3 was unreasonably dangerous, improper, and a cause of  4 the fire."  5 What's your basis for that opinion?  6 A. Again, it's the testimony -- well, first of  7 all, it's the proper thing to do based upon product  8 safety guidelines, product safety management, human  9 factors literature, guidelines, recommendations, the  10 warnings literature, guidelines and recommendations.  11 It's what companies do.  12 For example, we talked about the IdeaScan  13 scanner when I was with IBM. My actions were  14 directly the result of the increase in the number of  15 claims. If the legal department had sequestered  16 that information, and didn't provide it to the rest  17 of the product development team, they wouldn't have  18 known. If they didn't know, they wouldn't have made  19 any changes because they wouldn't have known there  20 was a problem. But because that information was  21 shared with the product development team, they  22 brought a usability person in -- that was myself --  23 to come in, and address the problem. And I  24 addressed it by changing the warnings, and</p>	<p style="text-align: right;">188</p> <p>1 Electrolux could have provided was in conjunction  2 with one or both of the safeguards."  3 Did I read that correctly?  4 A. I think so.  5 Q. Okay. What's your basis for that opinion?  6 A. First is Michael Stoddard opined that the  7 indicator light, in conjunction with the cycle  8 counter, and/or airflow monitor, was feasible and  9 available. And, all of the product safety  10 literature, warnings literature, and human factors  11 literature combined state that you do not provide  12 warnings when safeguards are available. Warnings  13 are third in the hierarchy.  14 They're proper use is a supplement to  15 guarding, not a substitute for guarding. Therefore,  16 if Michael Stoddard is saying these things were  17 feasible and available, the only adequate warning  18 should have been as a supplement to the safeguard,  19 not as a substitute for the safeguard, which  20 Electrolux did improperly.  21 Q. And, I think we talked about this earlier,  22 but just to confirm. You're relying on  23 Mr. Stoddard's opinions, and his intended testimony,  24 that both the light, and the airflow monitor, were</p>
<p style="text-align: right;">187</p> <p>1 instructions, to get people to realize that there's  2 a problem, get them to realize what they have to do  3 to eliminate the problem, and then it worked. And  4 then when we went to the next design, we eliminated  5 the problem.  6 So, Electrolux didn't do these things. Karl  7 King didn't share the data. Ripley never saw the  8 data. Ricklefs never saw the data. I think -- let  9 me get into my analysis here because we've got --  10 oh, David Fuller, the quality engineer, Electrolux's  11 Quality Engineer, didn't know. He testified that no  12 one ever communicated to him the number of reported  13 fires, or personal claims, involving an Electrolux  14 dryer while he was employed as the Quality Engineer  15 for dryers.  16 This is absurd. I mean, the guy is  17 responsible for the quality of the product, and Carl  18 King, and the law department, aren't telling him.  19 Q. Okay. Anything else on 12?  20 A. I think that's a good covering.  21 Q. Okay. Opinion 13: "Because alternative  22 safeguards were available to mitigate the fire  23 hazard associated with lint buildup within the  24 dryer, the only adequate warning system that</p>	<p style="text-align: right;">189</p> <p>1 feasible at the time the Vitales' dryer was  2 manufactured. Is that right?  3 A. Sort of. I'm relying upon Mr. Stoddard to  4 say the cycle counter, and the airflow monitor, were  5 feasible and available.  6 Q. Okay.  7 A. Electrolux has already shown that the  8 indicator lights were feasible and available. They  9 used them on the dryer.  10 Q. But, did they use them on dryers that were  11 manufactured in 2004, the Vitale dryer, that you're  12 aware of?  13 A. The Vitales' dryer had an indicator light on  14 it. It just wasn't associated with the cycle  15 counter, or the airflow monitor. So the indicator  16 light technology was available, and was actually  17 used by Electrolux on the dryer. Its use, in  18 conjunction with the cycle counter, and the airflow  19 monitor, is what you're questioning.  20 Q. Right.  21 A. Yes.  22 Q. Okay.  23 A. So I am not relying upon whether or not the  24 indicator light could have been used because</p>

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<p style="text-align: right;">190</p> <p>1 Electrolux has used it. I am relying on Mike as to  2 whether the cycle counter, and airflow monitor,  3 could have been used.  4 Q. Okay. Opinion 14: "In conjunction with the  5 indicator light(s), Electrolux should have ensured  6 conspicuous, specific, and explicit on-product  7 warnings were provided on their Frigidaire  8 ball-hitch style freestanding dryers, including the  9 incident dryer."  10 A. Yeah, that should be GE. Sorry about that.  11 MS. YEMMA: Off the record.  12 (Discussion held off the record.)  13 BY MS. YEMMA:  14 Q. So I had read 14, and we made the correction  15 Frigidaire to GE.  16 So, what's your basis for Opinion No. 14?  17 A. The basis is that the warnings necessary to  18 inform users of what the indicator light was, and to  19 alert them to the hazard that the indicator light  20 was working with the cycle counter, or airflow  21 monitor, to avoid it.  22 Q. Okay. And, then, 15, we talked about this a  23 short while ago. "The warnings should have been  24 placed on top of the dryer and the back of the</p>	<p style="text-align: right;">192</p> <p>1 A. Yes.  2 Q. Okay. So 17, that opinion is, "It would  3 have been reasonable for Electrolux to provide an  4 adequate warning system, including two conspicuous,  5 specific and explicit on-product warnings, with  6 their GE branded dryer. The cost in terms of money,  7 effort, and time to do so would have been minimal  8 and insignificant."  9 What's your basis for that opinion?  10 A. Two things: The cycle counter, and  11 indicator light, that's Mike Stoddard's opinion, so  12 I'm relying on him for that.  13 Second, for my labels, Electrolux, we know  14 put them on the Laundry Center. So, I've got  15 opinions regarding them that deal with another case,  16 but Electrolux did show that they could put warnings  17 related to these topics on the dryer. And, Brian  18 Ripley testified that he could have put another  19 warning on the dryer, too.  20 And, that's my basis, as far as costs go. I  21 mean, this isn't an expensive adventure for them.  22 Q. Have you done any type of cross analysis?  23 A. Not for this case because Electrolux has  24 already done it with their Laundry Center.</p>
<p style="text-align: right;">191</p> <p>1 dryer, where relevant (see below), and repeated  2 within the manuals, checklist, and operating  3 instructions for the dryer."  4 And when you say "see below", do you mean on  5 the prior page?  6 A. Yes, ma'am.  7 Q. Okay. And, what's your basis for Opinion  8 No. 15?  9 A. On top of the dryer is the indicator light  10 warning. If they weren't going to put the indicator  11 light, and the cycle counter, they needed to provide  12 the warning that's in Illustration 3 on top of the  13 dryer where it was prominently placed, readily  14 visible, conspicuous, every time the dryer was  15 encountered.  16 On the back of the dryer for the foil --  17 flexible foil warning, we'll call it, Illustration  18 4, because that's where the venting system is hooked  19 up. That's where the information was relevant for  20 the installer. So, it needed to be placed where it  21 was relevant, and was placed where and when the  22 information was needed.  23 Q. Okay. And, I think that also covers Opinion  24 16. Right?</p>	<p style="text-align: right;">193</p> <p>1 But, in other cases, we're talking about a  2 single label costing, maybe, a dollar, if that. For  3 Electrolux, when they're building, I don't know, a  4 couple hundred thousand dryers a year, we're talking  5 cents for the labels.  6 Q. So the label that's on the Laundry Center --  7 and I realize the Vitale dryer was a freestanding  8 dryer -- are you critical of the language of that  9 on-product label?  10 MR. HUGHES: Are you talking about  11 the warning label on Laundry Centers?  12 THE WITNESS: Yes.  13 MS. YEMMA: The warning label,  14 right.  15 MR. HUGHES: I think we are kind of  16 straying a little bit past the opinions that  17 are in his report with respect to the  18 adequacy of the warning content on the  19 Laundry Centers, which we noted in other  20 cases he's been critical of, that you're  21 aware of.  22 But, I don't think that's included  23 in your report in the analysis.  24 THE WITNESS: No.</p>



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<p>1 MS. YEMMA: But, he does reference 2 it. He references the label. 3 So, are you instructing him not to 4 answer that question? 5 MR. HUGHES: Yes. I think that's 6 outside of his report. 7 MS. YEMMA: Okay, that's fine. No 8 problem. 9 MR. HUGHES: Let me put it on the 10 record clearly: It's outside the opinions 11 in his report related to this case. 12 MS. YEMMA: Fair enough. Okay. 13 BY MS. YEMMA: 14 Q. Moving to 18: "Had an adequate warning 15 system, including two conspicuous, explicit, and 16 specific on-product warnings, been provided, 17 Electrolux would have ensured that Joseph and Ursy 18 Vitale were provided with the information they 19 needed to make an informed decision as to their use 20 and maintenance of the incident dryer and avoided 21 the fire." 22 A. Yes. 23 Q. And, what's the basis for that opinion? 24 A. Two things: One, is the warnings and human</p>	<p>1 to clean the interior of the dryer -- have the 2 interior of the dryer cleaned on a yearly basis by a 3 professional. We know that they took steps to clean 4 the dryer, and around the dryer. We know they took 5 steps to clean the transition duct, and the house 6 vent, on a yearly basis. So that goes to the 7 support that had they known, they would have gotten 8 it done. 9 We know that Electrolux is aware that most 10 of their users are using flexible foil venting. 11 Carl King testified that most of the dryers he sees 12 in his fires involve dryers that haven't been 13 cleaned. We have been through the literature from 14 everything from the CPSC to UL to a bunch of other 15 organizations that acknowledge that people don't 16 know, and do not clean the interior of the dryer. 17 Electrolux, on their own website, stated 18 that most people don't know that lint can build up 19 around the heating element, and cause a fire. 20 We know from the CPSC, the NFPA, and the 21 U.S. Fire Administration data that the majority of 22 dryer fires are caused by a lint buildup, and that, 23 I should say, the largest percentage are due to lint 24 buildup in the first item ignited as lint, dust and</p>
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<p>1 factors literature that shows if you provide a 2 warning system, like I described it, it will be 3 effective in informing people, and changing behavior 4 towards safety, that is, avoiding fire. 5 And two, Ursy Vitale testified that had a 6 conspicuous warning been placed on the front of the 7 dryer, she would have seen it, and heeded it. And, 8 I'm paraphrasing her testimony. But, I do reference 9 her testimony on page 33 of my report with respect 10 to that opinion. 11 Q. Okay. And, anything else with regard to 18? 12 A. I think that does it. 13 Q. So Opinion 19, "Without adequate warning to 14 the contrary, Joseph and Ursy Vitale's lack of 15 knowledge with respect to the need to have the dryer 16 cleaned every year and the prohibition of using 17 flexible foil ducting was foreseeable to 18 Electrolux." 19 What's your basis for that opinion? 20 A. A couple things: One, we know that they 21 didn't provide adequate warning. 22 Two, we know Joseph and Ursy Vitale did not 23 know that lint can build up near the heat source, 24 and create a fire. They were not aware of the need</p>	<p>1 so forth. And we know, based upon the data 2 collected, that most people are not cleaning the 3 dryers, the interior of their dryers. 4 So as I go through the last section of my 5 report, the Vitales' actions were consistent with 6 people's actions, and the fire and safety data 7 that's available with respect to how people use and 8 maintain dryers. 9 Q. Okay. And, Opinion 20: Electrolux knew or 10 should have known that user's (such as Joseph and 11 Ursy Vitale) knowledge did not extend to the fire 12 hazard associated with the use of flexible foil 13 ducting and not having the interior of the dryer and 14 house exhaust system cleaned yearly by an Electrolux 15 authorized service technician." 16 Dr. Vigilante, what's your basis for that 17 opinion? 18 A. The same type of information. Electrolux, 19 again, was aware that people weren't cleaning the 20 dryers. They were aware most users were using 21 flexible foil. Electrolux's own employees 22 testified -- and I got them listed everywhere from 23 Shelley Claussen, Steve Joerger, to David 24 Fuller, to Mike Ricklefs, to Brian Ripley. I don't</p>



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<p>1 think any of them had ever hired anybody to come in, 2 and professionally clean their dryer. 3 Jeorger testified he wasn't aware that lint 4 could accumulate behind the dryer drum and cause a 5 fire hazard. 6 Shelley Claussen, she testified why would 7 she clean -- remove the drum, and clean behind it? 8 She never had any problems with her dryer. That's 9 her testimony. 10 The Vitales testified they never had a 11 problem with their dryer, so why should they be any 12 different than Shelley Claussen. And, Claussen was 13 the Engineering Service Manager for over 10 years at 14 Electrolux. Her group had input into the 15 literature, and the warnings, that accompanied the 16 dryer, and she didn't know. So, how are the Vitales 17 going to know if the person, who is responsible for 18 the manuals and the warning, doesn't know. 19 David Fuller testified that each year, he 20 cleaned his dryer, but he did not disassemble it. 21 He did not remove the drum, or clean the lint 22 buildup within the heater pan to prevent lint from 23 building up near the heat source. 24 Fuller testified he was not aware that lint</p>	<p>1 may work with Ripley on rephrasing, or rewording, 2 the engineers content. 1995 to 2000, she was in the 3 Quality Department. She helped -- she finished 4 product quality audits, helped in the reliability 5 lab, did tests based upon engineer's test plan. She 6 was the ISO Coordinator for the East Webster City 7 Plant. 8 Q. Is that your summary? Is that from the 9 deposition in the State Farm consolidated matter? 10 A. Yes, ma'am. 11 Q. All right. Was there any other bases you 12 wanted to give for Opinion 20? 13 A. Other than what's in my report, I think I'm 14 good. 15 Q. Okay. And then your last Opinion No. 21: 16 "As with product users in general, Joseph and Ursy 17 Vitale relied upon Electrolux to provide them with a 18 reasonably safe product and adequate warning to 19 understand how to safely use the incident dryer." 20 What's your basis for that opinion? 21 A. It's basic product safety design guidelines 22 in the human factors literature, and the warnings 23 literature, and it's cited in the report. 24 MS. YEMMA: Okay. I'm just going</p>
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<p>1 could build up in the heater pan. Fuller also 2 testified that he was not aware that yearly cleaning 3 requirement was recommended to prevent lint building 4 near the heat source where it could ignite, and 5 cause a fire. 6 Again, Fuller is the Electrolux Quality 7 Engineer inside of dryers. So, even he didn't know. 8 Q. Going back to Shelley Claussen, do you know 9 specifically what Shelley's job was at Electrolux? 10 A. I know her title was Engineering Service 11 Manager for over 10 years at Electrolux. And her 12 group had input into the end-user literature and 13 warnings that accompanied their dryers. 14 Q. Apart from what you just read, do you know 15 specifically what her job was? 16 I know you know the title, but do you know 17 what her job was? 18 A. I would have to go into my summary of her 19 deposition to see if it's in there, if that's okay 20 with you. 21 Q. Okay. 22 A. Shelley Claussen testified that she had 23 input into the literature for dryers. Her group 24 would format them, and lay them out. Her employees</p>	<p>1 to look through my notes very quickly. 2 MR. HUGHES: Sure. Go ahead. 3 MS. YEMMA: Okay, thanks. 4 (Brief recess.) 5 MR. HUGHES: Back on the record. I 6 have just a quick statement for the record. 7 At the beginning of the deposition, 8 there was an issue about whether or not two 9 documents generated by Dr. Vigilante were 10 discoverable, and subject to production. 11 Counsel and I have talked about it off the 12 record. It's plaintiff's position that the 13 documents are not discoverable. They are 14 Dr. Vigilante's notes and criticisms of both 15 Dr. Purswell's report, as well as Randy 16 Bills' report. 17 Plaintiffs have not issued at this 18 time a rebuttal report in this matter. So, 19 we are not producing it. 20 There is a hard drive, produced by 21 Dr. Vigilante, which contains additional 22 materials that he relied upon. Again, it's 23 plaintiff's position that his notes on Dr. 24 Purswell's report, as well as his notes on</p>